S. Hrg. 101-1174

# RECLAMATION REFORM ACT AMENDMENTS OF 1990 AND TITLE XVI—DOUBLE SUBSIDIES

## HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

## COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

## S. 2659

TO AMEND AND SUPPLEMENT FEDERAL RECLAMATION LAW TO ELIMINATE ABUSES OF THE RECLAMATION PROGRAM, AND FOR OTHER PURPOSES

## H.R. 2567

AN ACT ENTITLED: RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1990

TUESDAY, JULY 31, 1990

Printed for the use of the
Committee on Energy and Natural Resources

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# RECLAMATION REFORM ACT AMENDMENTS OF 1990 AND TITLE XVI—DOUBLE SUBSIDIES

TUESDAY, JULY 31, 1990

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Bill Bradley, presiding.

## OPENING STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY

Senator BRADLEY. The subcommittee will come to order.

The Subcommittee on Water and Power will consider two bills concerning the Federal reclamation program. Our primary focus will be on S. 2659, a bill I introduced to amend provisions of the Reclamation Reform Act of 1982. Those provisions have been implemented in a way that has permitted large landowners and farm operators to receive taxpayer-subsidized water on holdings and operations that exceed 960 acres, thereby violating the intent of the act.

The subcommittee will also consider title XVI of H.R. 2567, a provision of that bill which would amend the Federal reclamation law and, generally speaking, require that reclamation project farmers to pay full cost for the water they receive from the Bureau of Reclamation if it is used to grow crops which are considered surplus under the USDA commodity programs.

In 1982 Senator Henry M. Jackson, former chairman of this committee, and one of the most esteemed members of this body ever, explained his hesitant support for the Senate bill that would, after some amendment, become the Reclamation Reform Act. That bill would have established a 2,080-acre limitation, a size that seemed too high to Senator Jackson.

He wrote, at that time, and these are his words:

> One of the basic purposes of the reclamation program is that project benefits should be distributed as widely as practicable to existing and prospective farmers. Indeed, this policy underpins the 160-acre ownership limit contained in the 1902 act. In establishing a new acreage limitation to reflect current and anticipated farm economics, I believe it is important that we do not abandon the policy of broad distribution.
>
> I say this not out of blind adherence to concepts of agrarian reform, but because we must be mindful that this policy is also the rationale for continuing the reclamation program. Future reclamation projects can be justified only if they benefit a large number of farmers; such projects cannot be justified is their principal impact is to allow large farms to become larger.

Reclamation reform must not only recognize modern farm economics, but also remain true to the basic purposes of the program.

When Congress passed the Reclamation Reform Act, we did so apparently mindful of his advice. The high acreage limitation that had concerned him, 2,080 acres, was reduced to 960 acres. Congress and the Nation were assured through floor statements, committee and conference reports, and news releases that the Reclamation Reform Act would do precisely what Senator Jackson urged. It was said again and again that Congress had found the means to recognize modern farm economics while remaining true to the basic purposes of the reclamation program. By increasing the acreage limitation, the RRA would provide enough taxpayer-funded help to make modern family farms viable enterprises while also ending the practices by which the Nation's biggest landowners had avoided paying their fair share for water. I have no doubt that the legislation passed because of those assurances.

I introduced S. 2659 and called this hearing because time has proven those assurances only partly true. To be sure, we have updated reclamation law to recognize modern farm economics. But, as implemented, the Reclamation Reform Act has not ended the practices by which some of the Nation's biggest farm operators avoid paying their fair share for the Bureau of Reclamation's water.

As Chairman of the Water and Power Subcommittee, it is my responsibility to protect the integrity of the reclamation program and to ensure that the public interest is honored. I am deeply concerned that the central social purpose and justification for the reclamation program itself is bleeding away through loopholes.

Plainly, it is in this committee's interest to close those loopholes. The reclamation program provides significant benefits to the West and to the entire Nation. Looking ahead, one can easily foresee that the West and the Nation will need a healthy, invigorated, and secure Bureau of Reclamation in the future every bit as much as we needed it in the past.

Yet the future of the Bureau of Reclamation and the reclamation program are profoundly threatened by the widespread and, in many respects, entirely legitimate perception that the Bureau's program is being taken advantage of by large landowners and farm operators to secure taxpayer-provided benefits intended for smaller farms.

The problem is that taxpayer-subsidized irrigation water, which in the spirit of the reclamation program, should be supporting moderately sized farms, is instead being treated as an individual entitlement, eligible to be pooled with other entitlements, subject only, it seems, to the limits imposed by antitrust law.

The result is what some have called "paper farms." We will hear a lot about them today. Since passage of the 1982 act, some large farms within certain reclamation projects have reorganized on paper through corporations, trusts, partnerships, and so on to create the impression of many separate entities, each holding less than a 960-acre piece of the total. These entities are separate farms only on paper, not in fact.

Those practices pose substantial risks to the reclamation program itself, and its present and potential beneficiaries. They undermine the Bureau's credibility here and around the Nation. They

hurt more than one State and more than one project. They tarnish every facet of the reclamation program, no matter how important, no matter how far above reproach. And let me say, I believe there are many facets above reproach.

In drafting S. 2659, I attempted to ensure that the bill would not interfere with legitimate, unobjectionable farming and business practices such as sharing of equipment, execution of production contracts, farm management agreements, some trusts, partnerships, corporations, and so on, but would, at the same time, make sure that large farmers and operators, however they may organize themselves, receive subsidized water on no more than 960 acres. Above that limit, water should generally be available, but at the cost incurred by the taxpayer to deliver that water.

The purpose of this hearing is, in major part, to determine whether the bill is as narrow in scope as I intended it to be. I am quite prepared to amend the bill as may be required to achieve this end and to address concerns of committee members and others who might testify today.

My goal for S. 2659 is twofold: to end the flow of subsidized water to the large farms and operations which have no fair claim to the taxpayer's help, and secondly to clear the path for the Bureau of Reclamation to survive and grow in order to deliver the services that the western portion of our Nation will require in the coming decades.

As I noted at the beginning of my remarks, the subcommittee will also hear testimony of title XVI of H.R. 2567, the so-called double subsidy provision. Some here may be familiar with last Thursday's discussion on double subsidies, which was triggered by several Senators' desire to offer a double subsidy amendment to the farm bill. I am pleased that my colleagues, and I saw Senator Heinz here, agreed to permit the subcommittee to consider legislation first before any attempt. This is an important matter, and it deserves very careful consideration.

Certainly I share the desire to reconcile apparently contradictory Federal programs, but I want to make sure that we do it in a way that prevents us from unwittingly damaging family farms, which the reclamation program is intended to benefit.

I look forward to very thorough hearing and discussion.

[The texts of the bills follow:]

II

101ST CONGRESS
2D SESSION

# S. 2659

To amend and supplement Federal reclamation law to eliminate abuses of the reclamation program, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

MAY 18 (legislative day, APRIL 18), 1990

Mr. BRADLEY introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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# A BILL

To amend and supplement Federal reclamation law to eliminate abuses of the reclamation program, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act shall amend and supplement the Act of October 12, 1982 (96 Stat. 1261, 1263), and Acts supplementary thereto and amendatory thereof, and may be referred to as the "Reclamation Reform Act Amendments of 1990".

SEC. 2. The Reclamation Reform Act of 1982 (Act of October 12, 1982, 96 Stat. 1261, 1263), as amended, is amended as follows:

(a) Section 202(4) is amended by inserting before the period, the words: ", and including minor children".

(b) Section 202(6) is amended by striking the phrase "owned or operated under a lease" and inserting in lieu thereof the phrase "owned, leased, or operated,"; and by striking the second sentence and inserting therein the sentence: "In determining the extent of a landholding, the Secretary shall include all direct and indirect landholdings of any individual or legal entity; except that the attribution of indirect landholdings shall be made in proportion to the beneficial interest held by such individual or legal entity.".

(c) Section 202(7) is amended by striking the period and inserting in lieu thereof the following: ": *Provided,* That all such persons are citizens of the United States or resident aliens thereof.".

(d) Section 202(9) is amended by striking the period and inserting in lieu thereof the following: "*Provided,* That all such persons are citizens of the United States or resident aliens thereof.".

(e) Section 202 is amended by adding the following new subsection (8) and renumbering the subsequent subsections accordingly:

"(8) The term 'operator' means the individual or entity that performs the greatest proportion of the decisionmaking or supervision for the agricultural enter-

prise on a given landholding or parcel of irrigation land at a given point in time. If an operator is an employee, subsidiary or otherwise part of a larger entity, the larger entity is also the operator.".

(f) Section 203(b) is amended by inserting after the word "leased", wherever it appears, the following: "or operated".

(g) Section 206 is struck in its entirety and the following inserted in place thereof:

"SEC. 206. As a condition to the receipt of irrigation water for lands in a district which has a contract as specified in section 203, each landowner, lessee, or operator within such district shall furnish the district, in a form prescribed by the Secretary, a certificate that they are in compliance with the provisions of this title, including a statement of the number of acres leased or operated, the terms of any lease or operating agreement, and, in the case of a lessee, a certification that the rent or other fees paid reflect the reasonable value of the irrigation water to the productivity of the land. The Secretary may require any lessee or operator to submit for the Secretary's examination a complete copy of any lease or other relevant agreement executed by each of the parties thereto.".

(h) Section 214(a) is amended by striking the phrase "lands in a district which are held by an individual or corporate trustee" and inserting therein "individual or corporate

trustees acting"; and by inserting at the end of the paragraph the new sentence: "Such ownership and pricing limitations shall, however, apply to trusts as they would to any other legal entity, and to trustees who also serve as operators.".

(i) Section 224 is amended by adding at the end of subsection (c) the sentence, "Notwithstanding any other provision of law, the Secretary shall establish appropriate and effective penalties for failure to comply with any provision of this Act or any regulation established pursuant to this Act.".

"(j) Section 224(e) is amended by inserting the following language in the final sentence immediately before the phrase which begins ", such land may be sold . . .": "*And provided further,* That the involuntarily acquiring party is not a former owner who sold the land from excess status, or the successors or assigns thereof".

(k) Section 224(i) is amended by striking the last sentence and inserting therein the sentence "The interest rate applicable to underpayments shall be equal to the rate applicable to expenditures as provided in section 202(3)(C).".

(l) Section 228 is amended by inserting the words "operator or" immediately before the words "contracting entity" wherever they appear.

(m) Insert new section 229 to provide as follows, and renumber subsequent sections accordingly."

"SEC. 229. The Secretary, Secretary of the Treasury and Secretary of Agriculture shall negotiate and execute a memorandum of understanding or other appropriate instrument to permit the Secretary access to and use of information collected or maintained by the Department of the Treasury and Department of Agriculture which would aid enforcement of the ownership and pricing limitations of Federal reclamation law, including this Act.".

(n) Section 203 is amended by striking the number "230" and substituting therefor the number "231."

II

101ST CONGRESS
2D SESSION

# H. R. 2567

IN THE SENATE OF THE UNITED STATES

JUNE 19 (legislative day, JUNE 11), 1990
Received; read twice and placed on the calendar

JUNE 20 (legislative day, JUNE 11), 1990
Ordered referred to the Committee on Energy and Natural Resources

# AN ACT

Entitled: Reclamation Projects Authorization and Adjustment Act of 1990.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Reclamation Projects Authorization and Adjustment Act of 1990".

**SEC. 2. DEFINITION OF SECRETARY.**

For purposes of this Act, the term "Secretary" means the Secretary of the Interior.

# TITLE I—BUFFALO BILL DAM AND RESERVOIR, WYOMING

SEC. 101. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

Title I of Public Law 97–293 (96 Stat. 1261) is amended as follows:

(1) In the second sentence of section 101, by striking "replacing the existing Shoshone Powerplant," and inserting "constructing power generating facilities with a total installed capacity of 25.5 megawatts,".

(2) In section 102—

(A) by amending the heading to read as follows: "RECREATIONAL FACILITIES, CONSERVATION, AND FISH AND WILDLIFE"; and

(B) by adding at the end the following: "The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act.".

(3) In section 106(a)—

(A) by striking "for construction of the Buffalo Bill Dam and Reservoir modifications the sum of $106,700,000 (October 1982 price levels)" and inserting "for the Federal share of the con-

struction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels)"; and

(B) by striking "modifications" and all that follows and inserting "modifications.".

## TITLE II—TREATMENT OF DRAINAGE FROM THE LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

### SEC. 201. AUTHORIZATION OF CONSTRUCTION, OPERATION, AND MAINTENANCE.

In order that water flowing from the Leadville Mine Drainage Tunnel, Colorado shall meet water quality standards, the Secretary is authorized, subject to the provisions of section 204 of this title, to—

(a) design, construct, operate and maintain a water treatment plant, including the disposal of sludge produced by such a treatment plant, as appropriate, and

(b) install concrete lining on the rehabilitated portion of the Leadville Mine Drainage Tunnel.

### SEC. 202. DESIGN.

The treatment plant authorized by section 201 shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine

Drainage Tunnel, and to meet requirements of the Clean Water Act.

**SEC. 203. TREATMENT OF COSTS.**

Design, construction, and operation and maintenance costs of the works authorized by section 201 shall be non-reimbursable.

**SEC. 204. DESIGN AND OPERATION NOTIFICATION.**

Prior to the initiation of construction and during construction of the works authorized by section 201, the Secretary shall submit the plans for design and operation of the works to the Administrator of the Environmental Protection Agency, and the State of Colorado to obtain their views on the design and operation plans. After such review and consultation, the Secretary shall notify the Speaker of the House of Representatives and the President Pro Tempore of the Senate that the discharge from the works to be constructed will meet the requirements set forth in Federal Facilities Compliance Agreement No. FFCA–89–1, entered into by the Bureau of Reclamation and the Environmental Protection Agency on February 7, 1989, and in National Pollutant Discharge Elimination System permit No. CO–0021717 issued to the Bureau of Reclamation in 1975 and reissued in 1979 and 1981.

**SEC. 205. OPERATION AND MAINTENANCE.**

The Secretary shall be responsible for operation, maintenance, and replacement of the water treatment plant, including sludge disposal authorized by this title. The Secretary may carry out the responsibilities of this section by contract.

**SEC. 206. RESTORATION OF FISH AND WILDLIFE RESOURCES.**

(a) AUTHORIZATION.—The Secretary is authorized, in consultation with the State of Colorado, to formulate and implement, subject to the provisions of subsection (b) of this section, a program for the restoration of fish and wildlife resources of those portions of the Arkansas River basin impacted by the effluent discharged from the Leadville Mine Drainage Tunnel. The formulation of the program shall be undertaken with appropriate public consultation.

(b) NOTIFICATION TO THE CONGRESS.—Prior to implementing the program, the Secretary shall submit a copy of the proposed restoration program to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for a period of not to exceed sixty days.

**SEC. 207. UPPER ARKANSAS RIVER BASIN WATER QUALITY RESTORATION INITIATIVE.**

(a) AUTHORIZATION.—The Secretary of the Interior is authorized, in consultation with the State of Colorado, the Environmental Protection Agency, and other Federal entities, to conduct investigations of water pollution sources and

impacts attributed to mining related and other development in the Upper Arkansas River Basin, to develop corrective action plans, and to implement corrective action demonstration projects. The Secretary of the Interior shall have no authority under this section at facilities or units which are subject to or covered by the Resource Conservation and Recovery Act or the Comprehensive Environmental Response Compensation and Liability Act of 1980.

(b) UPPER ARKANSAS RIVER BASIN.—For the purposes of subsection (a), the Upper Arkansas River Basin means the hydrologic basin in the Arkansas River in Colorado extending from Pueblo Dam (a United States Bureau of Reclamation facility) upstream to its headwaters.

(c) PUBLIC INVOLVEMENT.—The development of all corrective action plans and subsequent corrective action demonstration projects shall be undertaken with appropriate public involvement pursuant to a public participation plan, consistent with regulations promulgated under the Federal Water Pollution Control Act, developed by the Secretary in consultation with the State of Colorado and the Environmental Protection Agency.

(d) UTILIZATION OF NON-FEDERAL FUNDS AND SERVICES.—The Secretary shall arrange for cost sharing with the State of Colorado and for the utilization of non-Federal funds and in-kind services where possible. The Federal share of

costs for the activities authorized in subsection (a) of this section shall be limited to 50 percent.

(e) SUBMISSION OF PLANS TO CONGRESS.—Prior to implementing any corrective action demonstration project, the Secretary shall submit a copy of the proposed project plans to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

(f) CERCLA.—Nothing in this title affects or modifies, in any way, the obligations or liabilities of any person under other Federal or State law, including common law, with respect to the discharge or release of hazardous substances, pollutants or contaminants, as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601).

**SEC. 208. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to carry out the activities specified in sections 201 through 207 of this title, the sum of $20 million (based upon January 1989 prices). There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the works authorized by sections 201 and 207(a) of this title.

# TITLE III—LAKE MEREDITH SALINITY CONTROL PROJECT

## SEC. 301. AUTHORIZATION TO CONSTRUCT AND TEST.

The Secretary is authorized to construct and test the Lake Meredith Salinity Control Project, New Mexico and Texas, in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 788, and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in the June 1985 Technical Report of the Bureau of Reclamation on this project with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purpose of improving the quality of water delivered to the Canadian River downstream of Ute Reservoir, New Mexico, and entering Lake Meredith, Texas. The principal features of the project shall consist of production wells, observation wells, pipelines, pumping plants, brine disposal facilities, and other appurtenant facilities.

## SEC. 302. CONSTRUCTION CONTRACT WITH THE CANADIAN RIVER MUNICIPAL WATER AUTHORITY.

(a) AUTHORITY TO CONTRACT.—The Secretary is authorized to enter into a contract with the Canadian River Municipal Water Authority of Texas (hereafter in this title the "Authority") for the design and construction management of project facilities by the Bureau of Reclamation and

for the payment of construction costs by the Authority. Operation and maintenance of project facilities upon completion of construction and testing shall be the responsibility of the Authority.

(b) CONSTRUCTION CONTINGENT ON CONTRACT.—Construction of the project shall not be commenced until a contract has been executed by the Secretary with the Authority, and the State of New Mexico has granted the necessary permits for the project facilities.

**SEC. 303. PROJECT COSTS.**

(a) CANADIAN RIVER MUNICIPAL WATER AUTHORITY SHARE.—All costs of construction of project facilities shall be advanced by the Authority as the non-Federal contribution toward implementation of this title. Pursuant to the terms of the contract authorized by section 302 of this title, these funds shall be advanced on a schedule mutually acceptable to the Authority and the Secretary, as necessary to meet the expense of carrying out construction and land acquisition activities.

(b) FEDERAL SHARE.—All project costs for design preparation, and construction management shall be nonreimbursable as the Federal contribution for environmental enhancement by water quality improvement, except that the Federal contribution shall not exceed 33 per centum of the total project costs.

**SEC. 304. CONSTRUCTION AND CONTROL.**

(a) PRECONSTRUCTION.—The Secretary shall, upon entering into the contract specified in section 302 with the Authority, proceed with preconstruction planning, preparation of designs and specifications, acquiring permits, acquisition of land and rights, and award of construction contracts pending availability of appropriated funds.

(b) TERMINATION OF CONSTRUCTION.—At any time following the first advance of funds, the Authority may request that the Secretary terminate activities then in progress, and such request shall be binding upon the Secretary, except that, upon termination of construction pursuant to this section, the Authority shall reimburse to the Secretary a sum equal to 67 per centum of all costs incurred by the Secretary in project verification, design and construction management, reduced by any sums previously paid by the Authority to the Secretary for such purposes. Upon such termination, the United States is under no obligation to complete the project as a nonreimbursable development.

(c) TRANSFER OF CONTROL.—Upon completion of construction and testing of the project, or upon termination of activities at the request of the Authority, the Secretary shall transfer the care, operation, and maintenance of the project works to the Authority or to a bona fide entity mutually agreeable to the States of New Mexico and Texas. As part of such transfer, the Secretary shall return unexpended balances

of the funds advanced, assign to the Authority or the bona fide entity the rights to any contract in force, convey to the Authority or the bona fide entity any real estate, easements or personal property acquired by the advanced funds, and provide any data, drawings, or other items of value procured with advanced funds.

**SEC. 305. TRANSFER OF TITLE.**

Title to any facilities constructed under the authority of this title shall remain with the United States.

**SEC. 306. AUTHORIZATION.**

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this title, except that the total Federal contribution to the cost of the activities undertaken under the authority of this title shall not exceed 33 per centum.

## TITLE IV—CEDAR BLUFF UNIT, KANSAS

**SEC. 401. AUTHORIZATION OF REFORMULATION.**

The Secretary, consistent with the provisions of the Memorandum of Understanding between the Bureau of Reclamation and the Fish and Wildlife Service of the Department of the Interior, the State of Kansas, and the Cedar Bluff Irrigation District No. 6, dated December 17, 1987, is authorized to reformulate the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, including realloca-

tion of the conservation capacity of the Cedar Bluff Reservoir, to create—

(1) a designated operating pool, as defined in such Memorandum of Understanding, for fish, wildlife, and recreation purposes, for ground water recharge for environmental, domestic, municipal and industrial uses, and for other purposes; and

(2) a joint-use pool, as defined in such Memorandum of Understanding, for flood control, for water sales, for fish, wildlife, and recreation purposes, and for other purposes.

**SEC. 402. CONTRACT WITH THE STATE OF KANSAS FOR OPERATING POOL.**

The Secretary may enter into a contract with the State of Kansas for the sale, use and control of the designated operating pool, with the exception of water reserved for the city of Russell, Kansas, and to allow the State of Kansas to acquire use and control of water in the joint-use pool, except that, the State of Kansas shall not permit utilization of water from Cedar Bluff Reservoir to irrigate lands in the Smoky Hill River Basin from Cedar Bluff Reservoir to its confluence with Big Creek.

**SEC. 403. CONTRACT WITH THE STATE OF KANSAS FOR CEDAR BLUFF DAM AND RESERVOIR.**

(a) AUTHORIZATION.—The Secretary may enter into a contract with the State of Kansas, accepting a payment of $350,000, and the State's commitment to pay a proportionate share of the annual operation, maintenance, and replacement charges for the Cedar Bluff Dam and Reservoir. After the reformulation of the Cedar Bluff Unit authorized by this title, all net revenues received by the United States from the sale of water at the Cedar Bluff Unit shall be credited to the Reclamation Fund.

(b) CONTRACT TERMINATION.—Upon receipt of the payment specified in subsection (a), the Cedar Bluff Irrigation District's obligations under contract number 0–07–70–W0064 shall be terminated.

(c) TRANSFER OF FISH HATCHERY.—The Secretary may transfer ownership of the buildings, fixtures, and equipment of the United States Fish and Wildlife Service fish hatchery facility at Cedar Bluff Dam, and the related water rights, to the State of Kansas for its use and operation for fish, wildlife, and related purposes. If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

**SEC. 404. TRANSFER OF DISTRICT HEADQUARTERS.**

The Secretary may transfer title to all interests in real property, buildings, fixtures, equipment, and tools associated with the Cedar Bluff Irrigation District headquarters located near Hays, Kansas, contingent upon the District's agreement to close down the irrigation system to the satisfaction of the Secretary at no additional cost to the United States, after which all easement rights shall revert to the owners of the lands to which the easements are attached. The transferee of any interests conveyed pursuant to this section shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

**SEC. 405. ADDITIONAL ACTIONS.**

The Secretary may take all other actions consistent with the provisions of the Memorandum of Understanding referred to in section 401 that the Secretary deems necessary to accomplish the reformulation of the Cedar Bluff Unit.

## TITLE V—MISCELLANEOUS PROVISIONS, CENTRAL VALLEY PROJECT, CALIFORNIA

**SEC. 501. EXTENSION OF THE TEHAMA-COLUSA CANAL SERVICE AREA.**

The first paragraph of section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended by the Act of August 19, 1967 (81 Stat. 167), and the Act of December 22, 1980 (94 Stat. 3339), authorizing the Sacramento Valley Irrigation Canals, Central Valley Project, California, is fur-

ther amended by striking: "Tehama, Glenn, and Colusa Counties, and those portions of Yolo County within the boundaries of the Colusa County, Dunnigan, and Yolo-Zamora water districts or" and inserting in lieu thereof: "Tehama, Glenn, and Colusa Counties, those portions of Yolo County within the boundaries of the Colusa County Water District, Dunnigan Water District, Yolo-Zamora Water District, and Yolo County Flood Control and Water Conservation District, and Solano County, or".

**SEC. 502. AUTHORIZATION FOR LONG-TERM CONTRACT.**

(a) GENERAL AUTHORITY.—Notwithstanding the Energy and Water Development Appropriations Act, 1990, the Secretary is authorized, pursuant to section 203 of the Flood Control Act of 1962 (76 Stat. 1191), to enter into a long-term contract in accordance with Federal Reclamation laws with the Toulumne Regional Water District, California, for the delivery of water from the New Melones Unit, Central Valley Project, California, for the delivery of water from the New Melones project to the county's water distribution system.

(b) RECLAMATION LAWS.—For purposes of subsection (a), the term "Federal Reclamation laws" means the Act of June 17, 1902 (32 Stat. 388), and Acts supplementary thereto and amendatory thereof.

# TITLE VI—SALTON SEA RESEARCH PROJECT

## SEC. 601. RESEARCH ON ENHANCED EVAPORATION SYSTEM FOR SALINE WATER.

The Secretary is authorized to conduct a research project for the development of an enhanced evaporation system for saline water treatment. The project shall be located in the area of the Salton Sea of Southern California.

## SEC. 602. COST-SHARING.

The non-Federal share of the cost of the research project referred to in section 601 shall be 50 per centum of the total cost of the project.

## SEC. 603. REPORT.

Not later than September 30, 1995, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate regarding the results of the research project referred to in section 601.

## SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $10,000,000 to carry out the provisions of this title.

# TITLE VII—AMENDMENT TO SABINE RIVER COMPACT

## SEC. 701. CONSENT TO AMENDMENT TO SABINE RIVER COMPACT.

The consent of Congress is given to the amendment, described in section 703, to the interstate compact, described in section 702, relating to the waters of the Sabine River and its tributaries.

## SEC. 702. COMPACT DESCRIBED.

The compact referred to in the previous section is the compact between the States of Texas and Louisiana, and consented to by Congress in the Act of August 10, 1954 (Chapter 668; 68 Stat. 690; Public Law 85–78).

## SEC. 703. AMENDMENT.

The amendment referred to in section 701 strikes "One of the Louisiana members shall be ex officio the Director of the Louisiana Department of Public Works; the other Louisiana member shall be a resident of the Sabine Watershed and shall be appointed by the Governor of Louisiana for a term of four years: *Provided*, That the first member so appointed shall serve until June 30, 1958." in article VII(c) and inserts "The Louisiana members shall be residents of the Sabine Watershed and shall be appointed by the Governor for a term of four years, which shall run concurrent with the term of the Governor.".

## TITLE VIII—NAME CHANGE

**SEC. 801. DESIGNATION.**

The Salt-Gila Aqueduct of the Central Arizona Project, constructed, operated, and maintained under section 301(a)(7) of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(7)), hereafter shall be known and designated as the "Fannin-McFarland Aqueduct".

**SEC. 802. REFERENCES.**

Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in Sec. 801 hereby is deemed to be a reference to the "Fannin-McFarland Aqueduct".

## TITLE IX—WARREN ACT AMENDMENTS

**SEC. 901. EXCESS STORAGE AND CARRYING CAPACITY.**

The first sentence of the first section of the Act of February 21, 1911 (43 U.S.C. 523; commonly known as the "Warren Act"), is amended—

(a) by striking out "lands to be irrigated under any project" and inserting in lieu thereof "water users then entitled to the delivery of water from a Federal reclamation project";

(b) by striking out "lands and entrymen under the project" and inserting in lieu thereof "users of the Federal reclamation project, including fish and wildlife purposes,"; and

(c) by inserting before the final period ", municipal, industrial, domestic, or miscellaneous purposes, including fish and wildlife purposes".

## TITLE X—AMENDMENTS TO RECLAMATION STATUTES

### SEC. 1001. CONTRACT AMENDMENTS.

Subsection (h) of section 8 of the Reclamation Project Act of 1939 (43 U.S.C. 485g(h)) is amended to read as follows:

"(h) If any classification or reclassification of irrigable lands undertaken pursuant to this section results in an increase in the outstanding construction charges or rate of repayment on any project, as established by an existing contract with an organization, the Secretary shall amend the contract to increase the construction obligation or the rate of repayment. No other modification in outstanding construction charges or repayment rates may be made by reason of a classification or reclassification undertaken pursuant to this section without the approval of Congress.".

### SEC. 1002. AUTHORITY FOR APPROPRIATE PENALTIES.

Section 224 of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww), as amended, is further amended by adding at the end of subsection (c) the following: "Notwithstanding any other provision of law, the Secretary shall establish appropriate and effective penalties for failure to comply with

any provision of this Act or any regulation established pursuant to this Act.".

## TITLE XI—WATER RECLAMATION AND REUSE

### SEC. 1101. PARTICIPATION IN STUDY.

The Secretary is authorized to participate with the City of San Diego, California in the conduct of a study of conceptual plans for water reclamation and reuse. The Federal share of the cost of the study referred to in this section shall not exceed 50 per centum of the total cost of the study.

### SEC. 1102. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated the sum of $250,000 to carry out the Federal share of the study specified in section 1101 of this title.

## TITLE XH—MINE EFFLUENT FISHERY

### SEC. 1201. ESTABLISHMENT OF FISHERY RESOURCES.

(a) AUTHORIZATION.—The Secretary is authorized and directed to conduct a feasibility study on establishing a Federal fish hatchery in McDowell County, West Virginia. Conditioned upon the completion of the feasibility study and the location of a suitable site and water supply, the Secretary is authorized to construct a Federal fish hatchery as provided for in the feasibility study. The study shall be undertaken by the United States Fish and Wildlife Service in consultation with the State of West Virginia.

(b) If a fish hatchery is constructed in McDowell County, West Virginia pursuant to section 1201(a), the fish hatchery shall be known as the Carl R. Sullivan National Fish Hatchery.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated the sum of $2,500,000 to carry out the provisions of this title.

## TITLE XIII—McGEE CREEK CONTRACT ADJUSTMENT

**SEC. 1301. CONTRACT ADJUSTMENT.**

(a) AUTHORIZATION.—The Secretary is authorized and directed to enter into a contract with the McGee Creek Water Authority, Oklahoma City, Oklahoma, accepting a payment of $88,629,000.

(b) CONTRACT TERMINATION.—Upon receipt of the payment specified in subsection (a), the McGee Creek Water Authority's obligation under contract between the Authority and the Secretary numbered 0–07–50–X0822, dated October 11, 1979 shall be terminated.

**SEC. 1302. TITLE TO PROJECT FACILITIES.**

Notwithstanding any payments made by the McGee Creek Water Authority pursuant to section 1301(a) of this title or pursuant to any contract with the Secretary, title to project facilities of the McGee Creek Project, Oklahoma shall remain with the United States.

# TITLE XIV—WATER AND POWER NEEDS OF INSULAR AREAS

**SEC. 1401. FINDINGS.**

The Congress hereby finds and declares that assuring adequate supplies of water, sewerage, and power for the residents of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands has become a problem of such magnitude that the welfare and prosperity of these jurisdictions require the Federal Government to assist in finding permanent, long-term solutions to their water, sewerage, and power problems.

**SEC. 1402. STUDY.**

(a) AUTHORIZATION.—The Secretary, acting through the Bureau of Reclamation, is authorized and directed to undertake a comprehensive study of how the long-term water, sewerage, and power needs of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands can be resolved. Such study shall be conducted in consultation with the governments of those islands. Such study for each jurisdiction shall include, but not be limited to—

(1) an assessment of the magnitude and extent of current and expected needs;

(2) an assessment of how the needs can be resolved;

(3) the costs and benefits of alternative solutions;

(4) the need for additional legal authority for the President to take actions to meet the needs; and

(5) specific recommendations for the role of the Federal Government and each local government in solving the long-term needs.

(b) SUBMISSION OF THE REPORT.—Not later than 2 years after the date of enactment of this title, the Secretary shall transmit the studies required by this section, together with supporting documentation and recommendations of the Secretary and the views of the governments of the islands referred to in subsection (a), to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

**SEC. 1403. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary, acting through the Bureau of Reclamation, through the end of fiscal year 1994, such sums as may be necessary, which are authorized to remain available until expended.

## TITLE XV—RECLAMATION REFORM ACT AMENDMENTS

**SEC. 1501. SHORT TITLE AND DEFINITION.**

(a) SHORT TITLE.—This title may be cited as the "Reclamation Reform Act Amendments of 1990".

(b) DEFINITION.—As used in this title, the term "the Act" means the Reclamation Reform Act of 1982 (Public Law 97–293, 96 Stat. 1263, 43 U.S.C. 390aa, et. seq.).

**SEC. 1502. NEW DEFINITION.**

Section 202 of the Act is amended by adding the following new definition, and renumbering the subsequent sections accordingly:

"(3) The term 'farm' or 'farm operation' means any landholding or group of landholdings, including partial landholdings, directly or indirectly farmed or operated by an individual, group, entity, trust, or any other combination or arrangement. The existence of a farm or farm operation will be presumed when ownership, operation, management, financing or other factors, individually or together, indicate that one or more landholdings, including partial landholdings, are directly or indirectly farmed or operated by the same individual, group, entity, trust, or other combination or arrangement thereof: *Provided*, That the mere sharing of labor, equipment or services by members of a family, where such sharing is not part of any larger direct or indirect joint operation or management, shall not by itself initiate said presumption.".

**SEC. 1503. ADDITION OF FARM OR FARM OPERATION TO THE ACT.**

(a) The second sentence of section 203(b) of the Act is amended by inserting after "landholding" wherever it appears, the following: ", farm, or farm operation", and inserting after "leased" wherever it appears the following: ", farmed or operated".

(b) Section 205 of the Act is amended by inserting after "landholding" wherever it appears, the following: ", farm, or farm operation", and by inserting after "landholdings" the following: ", farms or farm operations".

**SEC. 1504. TRUSTS.**

Section 214(a) of the Act is amended by striking the period and inserting at the end of the section the following: ", except that such limitations shall apply to any trust, trust beneficiary, and farm or farm operation operated by or for such trustee for one or more beneficiaries. The provisions of this section, as amended, shall be applicable to any trust approved by the Secretary prior to June 14, 1990, to which the Secretary has not already applied such ownership or pricing limitations, 180 days after the date of enactment of this Act. In the case of all other trusts, such limitations are immediately applicable.".

**SEC. 1505. INTENT AND PURPOSES.**

Section 224(c) of the Act is amended to read as follows:

"(c) The Secretary is directed to prescribe regulations and shall collect all data necessary to carry out the intent, purposes, and provisions of this title and of other provisions of Federal reclamation law.".

**SEC. 1506. REPORTING REQUIREMENTS.**

(a) Section 228 of the Act is amended by inserting after "contracting entity" wherever it appears, the following: ", farm, or farm operation".

(b) Section 206 of the Act is amended by inserting after the final sentence the following: "This section shall also apply to all landholdings, farms, or farm operations, to all lands operated under any kind of operating agreement, and to all operators thereof. The Secretary, may also require the submission of any agreement or other document relating to the certification.".

**SEC. 1507. RELIGIOUS OR CHARITABLE ORGANIZATIONS.**

Section 219 of the Act is amended by—

(a) inserting at the beginning "(a)"; and

(b) inserting the following new subsections:

"(b) The terms 'farm' or 'farm operation' shall not apply to any landholding of a religious or charitable entity or organization which qualifies as an individual under this section. If an individual religious or charitable entity or organization holds land as a lessor within a district, it shall qualify as an individual with respect to such lands: *Provided,* That the

entity or organization directly uses the proceeds of the lease only for charitable purposes: *Provided further,* That the lessee is eligible to receive reclamation water upon the leased lands.

"(c) If an individual religious or charitable organization holds lands within a district, but fails to qualify as an individual under this section, its lands within a district with regard to which it does not qualify as an individual shall be lands held in excess of the ownership limitations of section 209 of this Act, and shall receive reclamation water only as excess lands in compliance with the provisions of section 209 of this Act. The failure of an individual religious or charitable entity or organization to qualify as an individual under this section shall not affect the qualification as an individual under this section of another individual religious or charitable entity or organization which is affiliated with the same central organization or is subject to a hierarchical authority of the same faith.".

**SEC. 1508. RESTRICTION OF BENEFITS TO CITIZENS AND RESIDENT ALIENS.**

(a) Section 202(7) of the Act is amended by striking the period and inserting in lieu thereof the following: ": *Provided,* That all such persons are citizens of the United States or resident aliens thereof.".

(b) Section 202(9) of the Act is amended by striking the period and inserting in lieu thereof the following: ": *Provided,* That all such persons are citizens of the United States or resident aliens thereof.".

## TITLE XVI—COST OF IRRIGATION WATER

### SEC. 1601. COST FOR DELIVERY OF WATER USED TO PRODUCE THE CROPS OF CERTAIN AGRICULTURAL COMMODITIES.

Section 9 of the Reclamation Projects Act of 1939 (43 U.S.C. 485h) is amended by inserting at the end thereof the following new subsection:

"(g)(1) All contracts entered into, renewed, or amended under authority of this section or any other provision of Federal reclamation law after—

"(A) 2 years after the date of enactment of this subsection shall require that the organization agree by contract with the Secretary to pay at least 50 percent of full cost for the delivery of water used in the production of any crop of an agricultural commodity for which an acreage reduction program is in effect under the provisions of the Agricultural Act of 1949, if the stocks of such commodity in Commodity Credit Corporation storage exceed an amount that the Secretary of Agriculture determines is necessary to provide for a reserve of such commodity that can reasonably be ex-

pected to meet a shortage of such commodity caused by drought, natural disaster, or other disruption in the supply of such commodity, as determined by the Secretary of Agriculture; and

"(B) 4 years after the date of enactment of this subsection shall require that the organization agree by contract with the Secretary to pay at least full cost for the delivery of water used in the production of any crop of an agricultural commodity for which an acreage reduction program is in effect under the provisions of the Agricultural Act of 1949, if the stocks of such commodity in Commodity Credit Corporation storage exceed an amount that the Secretary of Agriculture determines is necessary to provide for a reserve of such commodity that can be reasonably be expected to meet a shortage of such commodity caused by drought, natural disaster, or other disruption in the supply of such commodity, as determined by the Secretary of Agriculture.

"(2) The Secretary shall announce the amount of the full cost payment for the succeeding year on or before July 1 of each year.

"(3) As used in this subsection, the term 'full cost' shall have the meaning given such term in paragraph (3) of section 202 of the Reclamation Reform Act of 1982.

"(4) This subsection shall not apply to—

"(A) any contract which provides for irrigation on individual Indian or tribal lands on which repayment is deferred pursuant to the Act of July 1, 1932 (chap. 369; 47 Stat. 564; 25 U.S.C. 386(a); commonly referred to as the 'Levitt Act');

"(B) an amendment of any contract with any organization which, on the date of enactment of this subsection, is required pursuant to a contract with the Secretary as a condition precedent to the delivery of water to make cash contributions of at least 20 percent of the cost of construction of irrigation facilities concurrently with the construction of such facilities by the Secretary;

"(C) any contract which carries out the provisions of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99–294, 100 Stat. 418); and

"(D) water delivered to any agricultural producer who is not a participant in any acreage reduction program in effect under the Agricultural Act of 1949.".

## TITLE XVII—BUY-AMERICAN

**SEC. 1701. BUY-AMERICAN REQUIREMENT.**

(a) DETERMINATION BY THE SECRETARY OF THE INTERIOR.—If in carrying out title I of Public Law 97–293 (96 Stat. 1261), any provision of this Act, or any amendment

made by this Act, the Secretary of the Interior, with the concurrence of the United States Trade Representative and the Secretary of Commerce, determines that the public interest so requires, the Secretary of the Interior is authorized to award to a domestic firm a contract that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 51 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

In determining under this subsection whether the public interest so requires, the Secretary shall take into account United States international obligations and trade relations.

(b) LIMITED APPLICATION.—This section shall not apply to the extent to which—

(1) such applicability would not be in the public interest;

(2) compelling national security considerations require otherwise; or

(3) the United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(c) LIMITATION.—This section shall apply only to contracts for which—

(1) amounts are authorized by title I of Public Law 97–293, this Act, or any amendment made by this Act to be made available; and

(2) solicitations for bids are issued after the date of the enactment of this title.

(d) REPORT TO CONGRESS.—The Secretary shall report to the Congress on contracts covered under this section and shall report to the Congress on the number of contracts that meet the requirements of subsection (a) but which are determined by the United States Trade Representative to be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party. The Secretary shall also report to the Congress on the number of contracts covered under this title and awarded based upon the parameters of this section.

(e) DEFINITIONS.—For purposes of this section:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) DOMESTIC FIRM.—The term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States.

(3) FOREIGN FIRM.—The term "foreign firm" means a business entity not described in paragraph (2).

**SEC. 1702. PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.**

(a) If the Secretary of Interior determines that any person intentionally affixes a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall declare that person ineligible to receive a Federal contract or grant in conjunction with the issuance of any contract made under this Act for a period of not less than 3 years and not more than 5 years. The Secretary may bring action against such person to enforce this subsection in any United States district court.

(b) RESTRICTIONS ON CONTRACT AWARDS.—No person or enterprise domiciled or operating under the laws of a foreign government may enter into a contract or subcontract made pursuant to this Act if that government unfairly maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm

to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of the Trade Agreements Act of 1979.

## TITLE XVIII—SUNNYSIDE VALLEY IRRIGATION DISTRICT

**SEC. 1801. CONVEYANCE.**

The Secretary of the Interior shall convey to Sunnyside Valley Irrigation District of Sunnyside, Washington, by quitclaim deed or other appropriate instrument and without consideration, all right, title, and interest of the United States, excluding oil, gas, and other mineral deposits, in and to a parcel of public land described as Lots 1 and 2 of Block 34 of the Town of Sunnyside in Section 25, Township 10 North, Range 22 East, Willamette Meridian, Washington.

## TITLE XIX—SLY PARK UNIT SALE

**SEC. 1901. SALE OF SLY PARK UNIT.**

(a) IN GENERAL.—The Secretary shall, as soon as practicable after date of enactment of this Act, sell the Sly Park Unit to the El Dorado Irrigation District.

(b) SALE PRICE.—The Secretary shall negotiate with the District a sale price which is acceptable to both the District and the United States. The factors to consider when negotiating the sale price shall primarily include, but are not limited to—

(1) the construction costs as included in the accounts of the Secretary, plus

(2) interest on the construction costs allocated to domestic use at the authorized rate included in enactment of the Act of October 14, 1949 (63 Stat. 852), up to an agreed upon date, plus

(3) the presently assigned Federal operation and maintenance costs, less

(4) all revenues to date as collected under the terms of the contract (Symbol 175v–1809) between the United States and the El Dorado Irrigation District.

(c) TERMS OF PAYMENT.—The Secretary may negotiate for a payment of the purchase price on a lump-sum basis or on a semiannual basis for a term of not to exceed twenty years. If payment is not to be lump-sum, then the interest rate to be paid by the District shall be the rate referred to in subsection (b)(2).

(d) CONVEYANCE.—Upon completion of payment by the District, the Secretary shall convey to the El Dorado Irrigation District all right, title, and interest and future liability of the United States in and to the Sly Park Unit. All costs associated with the transfer shall be borne by the District.

**SEC. 1902. DEFINITIONS.**

For the purpose of this title, the term—

(1) "El Dorado Irrigation District" or "District" means a political subdivision of the State of California duly organized, existing, and acting pursuant to the laws thereof with its principal place of business in the city of Placerville, El Dorado County, California.

(2) "Secretary" means Secretary of the Interior.

(3) "Sly Park Unit" means the Sly Park Dam and Reservoir, Camp Creek Diversification Dam and Tunnel and conduits and canals as authorized under the American River Act of October 14, 1949 (63 Stat. 853).

Passed the House of Representatives June 14, 1990.

Attest: DONNALD K. ANDERSON,

*Clerk.*

Senator BRADLEY. Senator Burns.

## STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. Thank you, Mr. Chairman. I appreciate the opportunity to be here today, listening and learning about Federal water policy in the West.

As you know, Mr. Chairman, water is our lifeblood in the West. And water law in the West is different than in the eastern United States. Water is what is important to people in the West.

Those of us representing States actually located in the West are constantly made aware of the importance of water to economic development. In my own State of Montana, parts of our State are experiencing the effects of an 8-year drought. In addition, the Corps of Engineers continues to use water stored in Fort Peck and that reservoir to better move barge traffic downstream.

The economic effect of subsidized water—much has been said about Federal subsidies in Washington over the past several days; we just completed the farm bill. On the floor of the Senate we have just completed that bill, in which much of the discussion was centered around so-called subsidies to farmers.

Speeches were made about how farm subsidies were hurting consumers and the American taxpayer. Nothing could be further from the truth. What the American taxpayer and American society is buying with farm program payments is an insurance policy that guarantees an abundant supply of wholesome food at reasonable prices. I believe that the majority of my colleagues agree with that assessment.

Federal subsidies to water in the arid West may not be so very different. Most attention focuses on water subsidies to farmers, particularly on the few that exceed the 960-acre limit. Not much attention is paid to Federal water subsidies to build drinking water systems that benefit towns and cities that dot our country, both East and West; to build flood control projects that benefit taxpayers in America who may not be connected even with agriculture in any way whatsoever; or a whole range of projects that would not be accomplished without Federal participation. I would even venture to say that few of those projects have been put into place in the eastern United States without Federal help.

Mr. Chairman, we need to root out some abuses where they occur, but we would be remiss, however, not to recognize the benefits that have accrued to the wise use of Federal dollars to develop these counties, and the country's water resources. We must not throw out the baby with the bath water. Water is too precious, especially fresh water, to this country, both East and West.

And I thank the Chair.

Senator BRADLEY. Thank you, Senator Burns.

Senator Conrad.

## STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. Mr. Chairman, first I want to thank you for holding this hearing because I think it is a balanced hearing. We

are going to hear from all of the interest groups, all of the interested parties. And I think that is important.

I do think something that Senator Burns talked about needs to be driven home. We monkey with the American food production system at some peril. The fact is, American agriculture is an American success story. If there is any part of our economy that is functioning well, it is American agriculture. It is producing an enormous trade surplus for this country. It is producing the lowest cost food, not only in our country's history, but in world history. And it is producing abundant and readily available supplies of food.

We do not have to wonder what happens when a food system does not work. All we have to do is look to Eastern Europe and the Soviet Union. Recently when I was there, I saw people standing in line around the block waiting to be able to buy a piece of fruit; people standing in lines around the block on the rumor that there was a piece of meat that might be available for purchase. We do not have that experience. And even after the most protracted drought in over 30 years in this country, we do not have that problem.

We just had a visitor to my hometown from Latvia, or from Lithuania, and he went to a grocery store in Bismarck, North Dakota—went up and down three aisles and had to leave the store, he was so overcome by emotion. He could not believe the choices that were available in North Dakota to the average consumer; could not believe that was possible in this country. And so I want to say, as for one, I think we have to look very carefully when we talk about making changes, so that we do not do something that is certainly unintended that would interrupt what has been the success of American agriculture.

With that said, I also want to emphasize that there are clearly abuses in some areas that need to be addressed and that is what this subcommittee intends to do. But I also want to be sure that we do not inadvertently interrupt long-standing relationships that have been productive not only for American agricultural producers, but for our consumers as well.

Senator BRADLEY. Thank you very much, Senator Conrad.

Senator Wallop.

## STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Senator WALLOP. Thank you, Mr. Chairman.

I echo both Senator Conrad and Senator Burns because I feel that both the bills that we are considering today can best be described as an attack on Western agriculture and the Western way of life. But most important, if enacted, their impact would be far-reaching and severe because all Americans benefit from a strong and stable program, which will undoubtedly be jeopardized under these provisions.

It seems more than a little important for this committee to keep in mind that both the bills would be more harmful to small farmers than large ones because small farmers have less borrowing power and find it harder and harder to purchase new equipment

and obtain the expertise to switch to alternative crops. I wonder if that is truly what the sponsors have in mind.

Moreover, the cost of administering either bill, when combined with the negative impacts on local and regional economies, would cancel any excess revenues that the Treasury may receive.

The so-called double subsidy proposal that bars farmers from receiving subsidized reclamation project water if they also participate in the commodity programs—this amendment to reclamation law would cause grave harm to the family farmers and could actually wipe out certain farming communities.

I share the deep frustration of my colleague from Idaho over the unequalled and unfair treatment of Western water projects. And I, too, am particularly tired of hearing how Western repayment is called a subsidy and Eastern non-payment is overlooked. When total Federal expenditures are taken into account, Wyoming repays 84 percent of Federal costs on water projects, one of the highest in the country. It is a history of which, we in Wyoming, are rightly proud.

In contrast, you in the Eastern States would pay virtually nothing for Corps of Engineers projects which keeps water from flooding valuable farm lands. And so, before attacking reclamation States such as Wyoming, I would advise others to take a good, hard look in their backyards.

Mr. Chairman, I have other paragraphs which I will not read at the moment and ask that they be inserted in the record.

[The prepared statement of Senator Wallop follows:]

PREPARED STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Mr. Chairman, both bills we are considering today can best be described as an attack on western agricultural and the western way of life. But if enacted their impact would be far-reaching and severe—for all Americans benefit from a strong and stable U.S. agriculture program which would be jeopardized under these provisions.

It is important for this Committee to keep in mind that both bills would be more harmful to small farmers than to large ones because small farmers have less borrowing power and would find it harder to purchase new equipment and obtain the expertise to switch to an alternative crop. I wonder if that is truly what their sponsors have in mind.

Moreover, the cost of administering either bill, when combined with the negative impacts on local and regional economies, would cancel any extra revenues to the Federal Treasury.

The so-called "double subsidy" proposal would bar farmers from receiving subsidized reclamation project water if they also participate in commodity programs. This amendment to reclamation law would cause great harm to America's family farmers and could actually wipe out whole farming communities. It would also destabilize the price and supply of commodities and would remove the incentives for farmers to comply with important environmental and conservation practices. This amendment is just not a good idea.

I share the deep frustration of my colleague from Idaho over the unequal and unfair treatment of western water projects. I too am tired of hearing how Western repayment is called a "subsidy" while Eastern non-payment is ignored and overlooked. When total federal expenditures are taken into account, Wyoming repays 84% of federal costs on water projects—one of the highest in the country. That is a history of which we in Wyoming are very proud Mr. Chairman and I will fight to ensure that BuRec projects continue to bring water so our farmers can remain such a productive part of this nation.

In contrast, you in the eastern states repay virtually nothing on Corps of Engineers projects which keep water from flooding valuable farmlands. Before attacking Reclamation States such as Wyoming, I would advise others to take a good hard look at their own backyards.

I also have grave concerns with S. 2659 dealing with the Reclamation Program, Mr. Chairman. There are many farm management, custom farming and family relationships that are legitimate and efficient which I believe should be preserved. A restructuring of eligibility definitions and farming operations could be very destructive to western agriculture, Mr. Chairman. In addition you could be creating an administrative nightmare for both the Bureau of Reclamation and the farmers with these certification and reporting requirements.

In the 1987 amendments to the Reclamation Reform Act Congress directed the Bureau of Reclamation to audit landholders over 960 acres by December 1990 and to submit annual reports to this Committee. At the end of that time Interior was to analyze the results and present Congress with its findings. The Secretary has directed Commissioner Underwood to include administrative and legislative recommendations in the report to Congress to be submitted by February 1, 1991. It is premature for Congress to act at this point in time.

In sum, I feel these bills are ill-conceived, could be ruinous for the Western way of life and are economically devastating to the nation as a whole. I hope that the sponsors and supporters of these bills listen very carefully to the witnesses today who describe how they will affect them and their neighbors.

On a side-note Mr. Chairman I would like to address an issue raised in the testimony of the National Wildlife Federation—in fact 6 pages of testimony have been dedicated to the issue of fisheries below Buffalo Bill Dam.

The Federation's concern for Wyoming's fisheries is laudable. In fact, there may no part of Wyoming more keenly aware of the importance of recreation, wildlife and tourism to our state than this corner which includes Yellowstone and Teton National parks and Buffalo Bill Dam.

I have no bones with the Federation's purpose—only with its mode of operating and I want to send a clear message. Stop stabbing the State of Wyoming in the back. You have tried to do an end run around the State and this Delegation since you first proposed this amendment on the House side. You have treated with disrespect the very instream flow law which your organization worked so hard to enact and you have called Governor Mike Sullivan a liar. Enough is enough.

It is one thing to get yourselves wrapped up in the politics of the Wind River Reservation, it is another to deal with the real and honest circumstances of a situation and work to resolve issues in a responsible manner.

Mr. Chairman, I would like to include for the record 2 letters from Governor Mike Sullivan on this issue—one to Tom Dougherty of the National Wildlife Federation and one to Congressman George Miller. Both letters confirm Wyoming's intentions to deal with this issue where it properly belongs—at the State level.

Senator WALLOP. On a side note, I want to address an issue raised in the testimony of the National Wildlife Federation. In fact, six pages of testimony have been dedicated to the issues of fisheries below Buffalo Bill Dam.

The Federation's concern for Wyoming's fisheries is laudable. In fact, there may be no part of Wyoming more keenly aware of the importance of recreation and wildlife and tourism to our State than this corner which includes Yellowstone and Teton National Parks as well as Buffalo Bill Dam.

I have no bones with the Federation's purpose, only with its mode of operating. I want to send a clear message—stop stabbing the State of Wyoming in the back. You have tried to do an end run around the State and this delegation since you first proposed this amendment on the House side, treated with disrespect the very instream flow law which your organization worked so hard to enact, and you have called Governor Mike Sullivan a liar. Enough is enough.

It is one thing to get yourselves wrapped up in the politics of the Wind River Reservation; it is another to deal with the real and honest circumstances of a situation and work to resolve the issues in a responsible manner. You have chosen not to do that.

Mr. Chairman, I would like to include for the record two letters from Governor Mike Sullivan on this issue, one to Tom Doherty,

Chairman of the National Wildlife Federation, and one to Congressman George Miller. Both letters confirm Wyoming's intentions to deal with this issue where it properly belongs: at the State level.

[The letters referred to follows:]

STATE OF WYOMING,
OFFICE OF THE GOVERNOR,
*Cheyenne, WY, March 5, 1990.*

Mr. TOM DOUGHERTY,
*National Wildlife Federation, Campus Box 401, Boulder, CO.*

DEAR TOM: I have received your very candid letter of February 28, and feel that I owe you a response that is at least equal in candor. Let me begin that response by addressing a request that you made toward the close of your letter. You asked that; if I cannot support your amendment to H.R. 2567, I suggest alternatives.

These alternatives have already been proposed to you and to the Executive Board of the Wyoming Wildlife Federation in meetings here in Cheyenne, but let me take this opportunity to reiterate them to you. The fishery below Buffalo Bill Dam can be protected by an instream flow right secured under Wyoming law, by a release of water as per in the annual operating plan of Buffalo Bill Dam or by purchase of sufficient water to satisfy your needs.

If none of these options appeal to you or if you do not trust the State of Wyoming's Instream Flow Law, which your organization and you personally worked so hard to enact, then of course, it is your prerogative to pursue the course that you deem best. However, in seeking a solution to this issue through a Congressional venue, you must harbor no illusions about Wyoming's position and the vigor with which I will defend that position.

I am having a difficult time not being offended by the inference in your letter that my Administration is somehow insensitive to the needs of fish and wildlife resources in Wyoming or that I do not operate in good faith on environmental matters. I feel that my record of support for issues of concern to your members in Wyoming speaks eloquently otherwise. I have and will continue to support fisheries in our state without needing to be prodded by anyone. If, however, you equate environmental sensitivity with a willingness to allow the federal government to assume primacy over water decisions in Wyoming, then it is a litmus test that I am doomed to fail. I would say, as well, that so far as I know, the National Wildlife Federation has not, during the three years I have been in office, bothered to seek my support for the fishery below Buffalo Bill and did not make any such request with respect to an amendment that potentially endangered the passage of this important funding bill.

In summary, the issue of protecting the fishery below Buffalo Bill remains. My preferences as to a tool to accomplish this goal should be clear to you. Your choice, whether a tool or a weapon, will indicate to me how the National Wildlife Federation wishes to proceed.

With best regards, I am
Very truly yours,

MIKE SULLIVAN,
*Governor.*

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STATE OF WYOMING,
OFFICE OF THE GOVERNOR,
*Cheyenne, WY, June 14, 1990.*

Hon. GEORGE MILLER,
*Chairman, Subcommittee on Water, Power and Offshore Energy Resources, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This letter is to confirm my previous conversation with your office regarding Wyoming's commitment to protecting the fishery on the Shoshane River below Buffalo Bill Dam. As you are aware, I oppose any amendment to the Buffalo Bill legislation which imposes federal minimum requirements to stream flow in areas where Wyoming law provides a legislatively authorized process. The State Game & Fish Dept. has already commenced biological studies to determine adequate and required stream flows below Buffalo Bill in preparation for an application under Wyoming Law. As well, the State has worked with the Bureau of Reclamation as to its operating plan which, as adopted, provides a 100 cfs. flow.

This is to advise and assure you that I will see that these processes continue and that steps are taken under our laws to assure the study results are thoroughly reviewed with the Bureau, the U.S. Fish & Wildlife Service and steps taken to implement the recommendations.

Tha Buffalo Bill Dam funding represents a superb federal-state cooperation effort. I appreciate your assistance in seeing that the funding proceeds to assure that the project is not suspended for a lack of funding which can only serve to increase costs and delay completion.

With best regards, I am

Very truly yours,

MIKE SULLIVAN,
*Governor.*

Senator BRADLEY. Those will be inserted in the record. Your view is very clear.

[Laughter.]

Senator WALLOP. I hoped it would be.

Senator BRADLEY. Senator McClure.

## STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO

Senator MCCLURE. Thank you very much, Mr. Chairman.

I do not think there is any question as to my views on either of the subjects before the subcommittee this afternoon, so I will not take an inordinate amount of time with an opening statement.

I do want to express my appreciation to the Chairman for arranging to have GAO testify this afternoon. I regret that I did not respond to their report when it was released, but I thought it was sufficiently absurd that nobody would take it seriously. I was wrong. I look forward to a prolonged discussion of congressional expectations when they testify.

On the subject of the Chairman's legislation, I understand his objective and would simply say that we went down that road when we first considered reclamation reform. We did not go very far down that road before deciding it was unrewarding. And the House had the good sense to learn from our efforts in the late 1970's and did not go down that road at all. How a person manages his land is not the concern of the reclamation program. If it makes sense to engage in custom farming, that is fine. If it makes sense to work the land in combination with other landowners, that also is fine.

What we did in reclamation reform was to limit the amount of land which any given entity could own, either outright or through lease, and receive the benefit of irrigation water. We very specifically did not attempt to tell people how to work their land.

In 1987 we revisited the act and spelled out a test to determine whether a particular arrangement was a lease or an operating agreement. The test was whether the economic benefit was retained by the landowner or passed to the operator. During our hearings in 1987 we did receive testimony that the Congress should restrict farm management, that no farm should exceed 960 acres. We affirmatively rejected that suggestion.

The statement of managers specifically stated, and I quote, "It is important to state that the RRA did not limit the size of a farming operation, but rather limited the benefits of less than full cost irrigation water." That is what Congress enacted. And that is what the Congress intended. That is also sound Federal policy.

Senator Goldwater would have had us repeal all acreage limitations. And there are times when I almost wish we had done that. I still believe in the purpose of acreage limitations and the concept of the family farmer. I also see no problem with the family farm where various family members jointly work their individual land holdings. I see no problem with unrelated persons, each contracting with the same managers, so long as the transaction is arms-length and does not pass the economic benefit.

I do have a strong objection to the Congress or the administration telling farmers how best to work their land. And I see only mischief in this legislation, however well-intentioned it may be.

With respect to the provisions of the House bill dealing with the so-called double subsidy, I will have a lot to say. For the moment, I would only make two points. First, Congress clearly knew, understood, and intended that the farmers in certain projects would be growing program crops. In the Dakotas, Wyoming, Colorado, and parts of Montana, Idaho, and Washington there are no other options. We knew it and we approved it. Those farmers have no option. And this type of amendment is nothing less than an attempt to drive them off the land.

The second point is that I am tired and more than a little annoyed by those who receive full Federal subsidies for their so-called flood control projects so that their farmers will not be forced to hydroponics, or who receive full Federal subsidies for so-called navigation projects, so that cities which never smelled salt air can ply their international trade, complaining about the reclamation subsidy.

I am not opposed to flood control projects or navigational projects. But I would like a little more honesty from the beneficiaries of those Federal subsidies. Western reclamation irrigation repays its costs over time to the Federal Government, albeit without interest. Eastern agricultural interests who benefit from flood control repay nothing.

I will have considerably more to say as this hearing progresses. And if either of these subjects rears its head on the Senate floor, I will probably have not only a lot more to say, but I will probably have a few well-directed amendments to see that there is no double-dipping east of the 100th meridian.

With that, I would ask staff to put a chart up which I hope people may from time to time refer to or at least observe if they do not refer to it. It is simply a compilation of all of the costs of the Federal taxpayer in water projects across the United States. And depicted upon that chart, by region, are the amount of repayments made under those water project grants or investments.

If you will note, they run from west to east, with—the part in that pie chart that is repayment is in yellow. The part that is nonrepayable is green. And if you will note, throughout the reclamation States and through some of the Southern States, there are varying degrees of repayment required.

I would say, although it does not show on the chart, that my State of Idaho is one of the lower repayment schedule States among the Western reclamation States. We only repay 55 percent of the benefits. That is the lowest in the Western States.

But if you will notice the repayment, when it comes to repayment in the East Coast, and particularly the northeastern United States, is zero—not one penny.

When we start talking about Federal taxpayer subsidy to water projects, let us put the whole picture on the table. Let us get all the facts out there for people to review, not just a selected few.

Thank you very much, Mr. Chairman.

Senator BRADLEY. Thank you very much, Senator McClure.

We have a lot of witnesses today. And as I look at the witness list, I think it is going to be a very difficult job to move everyone through here and give everyone a chance in the time we have allotted. We are going to make the best effort to do that. To the extent that we cannot do it, we will have to shorten people's statements toward the end.

We have a group of Senators who would like to testify. I would recognize whichever one would like to testify, Senator Daschle or Senator Heinz or Senator Exon, or are you here simply——

Senator EXON. We are here to testify.

Senator BRADLEY. Please be my guests.

Senator HEINZ. Mr. Chairman, I made a deal with Senator Daschle. If I cut my statement to less than 5 minutes, he would let me go first.

I have not cleared it with Senator Exon.

Senator EXON. I object.

[Laughter.]

Senator BRADLEY. Senator Heinz, if you would keep it to 5 minutes, that will be fine.

## STATEMENT OF HON. JOHN HEINZ, U.S. SENATOR FROM PENNSYLVANIA

Senator HEINZ. Mr. Chairman, I ask unanimous consent that my entire statement be placed in the record.

Senator BRADLEY. Your full statement will be in the record.

Senator HEINZ. Mr. Chairman, I want to thank you for this opportunity to testify today on reclamation reform. I am very pleased we have this forum today to discuss whether our farm and reclamation policies, as you mentioned in your opening statement, are at odds and, perhaps, in need of reform.

Yesterday, I introduced reclamation legislation, S. 2941, somewhat similar to the amendment that I brought up on the Senate floor last week together with Senator Kohl. I would like to summarize the five provisions of that bill and then offer some general observations about reclamation reform.

The first provision of the bill would ensure that the water contracts recover current operating and maintenance O&M costs and some capital fixed costs.

The second provision would ensure that the Federal Government obtains the profit created by the construction of Federal irrigation water projects on excess land sales, as Congress intended. GAO, by the way, and the Office of Management and Budget estimate that this provision could generate $100 million in addition Federal revenues.

The third provision would repeal authority for incorporating renewal clauses in Bureau of Reclamation water service contracts. A repeal of the renewal requirement in the 1956 act would establish the need for reevaluation of water use as water service contracts expire.

The fourth provision would incorporate a June 1987 memorandum of understanding regarding the use of normalized commodity prices in the evaluation of the costs and benefits of future water projects.

The fifth provision would require reclamation farmers to pay full cost water rates if they produce surplus, that is to say program, crops regardless of whether they participate in USDA price and income support programs. Surplus crops nonetheless involve set-asides that the taxpayer must pay for. And that provision, Mr. Chairman, is similar to the original amendment that Representative Gejdenson offered to H.R. 2567 on June 14th.

Mr. Chairman, that summarizes the provisions of S. 2941. I would like to make just a few general observations.

First and foremost, I want to make it clear—I notice there is a large audience in the back; I do not want to be found face-down in a reclamation ditch—but reclamation reform is not anti-West nor is it anti-farm. We need and we depend on the bounty of American agriculture. But westerners, in my judgment—I used to live in the West—have to come to grips with the fact that agriculture, while extremely important and valuable, accounts for some 5 percent to 10 percent of the gross State product of these individual States, but it uses 85 percent to 90 percent of the water.

Now, I am not an economist, and I often argue with economists. But an economist would argue that water, a scarce resource out West, is being misallocated. What I am arguing here today is not that big mega-issue. Otherwise, I assume I would be found in that irrigation ditch. But that a small fraction of that water, reclamation water, being sold below cost to large users is not only a questionable practice, but when used to grow surplus or taxpayer-supported crops constitutes a totally unjustifiable economic farm or reclamation policy.

Now, I will be the first to admit that the agricultural impact of our legislation would be very small. As a matter of fact only 2 percent of the land growing program crops gets any reclamation water at all. Indeed, I view that as an additional reason to take this issue seriously and to make some decisions on it.

Ninety years ago, 50 years ago, perhaps even 20 years ago, reclamation projects represented a very appropriate and badly needed Federal investment in promoting settlement in the arid West. But the economics and demographics of the west have changed. Now the West and the South have more manufacturing jobs than the Northeast, Midwest region.

Traditionally, our Nation's industrial heartland, the West, has high technology. And now the West, according to the Federal Reserve Bank of San Francisco, has an economy that has grown much more rapidly than the national average since 1964, in large part because it has diversified away from the reliance on natural resource-based industries, including agriculture. That is their conclusion, not mine.

Mr. Chairman, advocating reclamation reform and efficient use of water does not mean cutting reclamation farmers off at the knees or depriving them of water. Rather, access to that water ought to be recognized and treated as a property right they hold subject to trade, lease, or sale. Doing so would protect the environment and individual farmers and foster economic growth.

So reclamation did help settle the West, but times have changed. So too must reclamation policy. Resistance even to incremental change makes that policy increasingly out of touch with its original mission and new economic, agricultural, and environmental concerns. Increasingly, the policy becomes more and more difficult to justify, particularly in an era of severe Federal budget deficits when every program and every dollar spent has to bring maximum returns to the Federal Government and the American taxpayer.

[The prepared statement of Senator Heinz follows:]

PREPARED STATEMENT OF HON. JOHN HEINZ, U.S. SENATOR FROM PENNSYLVANIA

Mr. Chairman, thank you for the opportunity to testify this afternoon on reclamation reform. I am pleased that we have this forum today to discuss whether our farm and reclamation policies are at odds, and perhaps in need of reform.

Last week, during consideration of the 1990 farm bill (S. 2830), Senator Kohl and I offered an amendment to prohibit farmers from participating in price and income support programs administered by the Department of Agriculture (USDA) if they receive irrigation water from federal reclamation projects at subsidized rates. You indicated your desire—before the Senate took action on the farm bill—to hold a hearing on the subject of "double dipping" and other reclamation issues. Accordingly, we withdrew the amendment.

During that debate, I mentioned that I intended to offer reclamation reform legislation prior to today's hearing. Yesterday, I introduced a reclamation bill—S. 2941—with Senator Rohl. I would like to summarize the five provisions of that bill, and then offer some general observations about reclamation reform.

The first provision of S. 2941 would ensure that water contracts recover current operating and maintenance (O&M) costs and some capital (fixed) costs. (It amends Section 208(a) of the Reclamation Reform Act of 1982 (RRA).)

This provision shouldn't be necessary, but the Bureau of Reclamation appears unwilling to implement the intent of Congress as expressed in previous reclamation legislation.

The second provision would ensure that the Federal Government obtains the profit created by the construction of federal irrigation water projects on excess land sales—as Congress intended. (It amends Section 209(f)(2) of the RRA.)

This provision is based on recommendations made by the General Accounting Office (GAO) in a February 1990 report (GAO/RCED-90-100) to your counterpart, Representative George Miller, who chairs the House Interior Subcommittee on Water, Power, and Offshore Energy Resources. GAO and the Office of Management and Budget estimate this provision could generate $100 million in additional federal revenues.

The third provision would repeal authority for incorporating renewal clauses in Bureau of Reclamation water service contracts. A repeal of the renewal requirement in the 1956 Act (Section 1(1) of P.L. 84-643) would establish the need for re-evaluation of water use as water service contracts expire.

The repeal would also diminish water users' claims in ongoing litigation and policy discussions that the scope and content of Environmental Impact Statements (EISs) on contract renewals should be restricted because they claim a perpetual right to given quantities of water. Frankly, I do not believe there is any legislative basis whatsoever for the notion that water users have perpetual claims extending beyond their 40-year or 50-year contracts. Certainly, none is implied. But this repeal clarifies the issue beyond any doubt.

The fourth provision would incorporate a June 1987 Memorandum of Understanding (MOU) regarding the use of normalized commodity prices in the evaluation of the costs and benefits of future water projects.

Repeatedly, the previous Administration argued that "market- clearing" commodity prices—not USDA-supported prices—ought to be used in determining whether future water projects make economic sense. The effect of adopting this provision

would be to ensure that only those water projects that actually produce a net increase in the real output of the Nation are supported for construction.

The fifth provision would require reclamation farmers to pay full-cost water rates if they produce surplus ("program") crops, regardless of whether they participate in USDA price and income support programs. This provision is similar to the original amendment Representative Sam Gejdenson offered to H.R. 2567 on June 14th.

Mr. Chairman, I earnestly hope the Subcommittee will consider these provisions as it fashions reclamation reform legislation. I encourage you to solicit the Administration's views and the views of other interested parties. Please consider these provisions as "beginning points" of any discussion about reclamation reform, subject to modification and improvement.

That, Mr. Chairman, summarizes S. 2941. Now, I would like to make a few observations about reclamation generally.

First and foremost, reclamation reform is not "anti-West" nor is it "anti-farm". Westerners have to come to grips with the fact that agriculture accounts for 5 or 10 percent of the Gross State Product (GSP) of individual states. But it uses 85 or 90 percent of the water. An economist would argue that water—a scarce resource out West—is being misallocated. Current reclamation policies impede economic growth.

The Bureau of Reclamation is proud of boasting about the federal tax revenues generated or the tax revenues accruing to state and local governments because of its irrigation projects. The Bureau bases its claims on the economic activity associated with reclamation projects, such as the value added in food processing. What the Bureau fails to acknowledge is that secondary benefits generated by a project do not necessarily increase the net production of the Nation as a whole, or even a particular region. What if the same federal funds had been spent somewhere else in the economy, say, to support an industrial park? Or if the funds had been left in private hands? If such alternative spending were to return more direct benefits than a water resources project with a benefit-cost ratio of less than one, greater secondary benefits and tax revenues could be expected.

Ninety years ago—fifty years ago—perhaps even twenty years ago—reclamation projects represented an appropriate federal investment in promoting settlement in the arid West. But the economics—and the demographics—of the West have changed. Now, the West and the South have more manufacturing jobs than the Northeast-Midwest region—traditionally our Nation's industrial heartland. Now, the West is attracting high technology. Now, the West—according to Federal Reserve Bank of San Francisco economist Ronald Schmidt—has an economy that has grown much more rapidly than the national average since 1964—in large part because it has diversified away from reliance on natural resource-based industries, including agriculture.

Mr. Chairman, two years ago Senator Tim Wirth and I cosponsored "Project 88", a public policy project designed to identify market forces that could be harnessed for environmental protection. One of the recommendations of "Project 88" was to remove barriers to water markets, a notion the Western Governors' Association has endorsed. According to the report,

> An effective approach to current water supply problems is to support development of Federal and state policies which facilitate the voluntary buying and selling of water rights by individuals, firms, and other organizations in order to increase the efficiency of the system—most notably by increasing incentives for conservation.
>
> . . . By allowing free markets in water rights, voluntary exchanges can take place which make both parties better off. When farmers have a financial stake in conserving water, when urban needs are met without shrinking agriculture and without building new dams and reservoirs, environmental protection gains. Measures which facilitate voluntary water transfers thus promote more efficient allocation of scarce water resources and curb the perceived need for additional, expensive, and environmentally disruptive water supply projects.
>
> The government should move to remove barriers to such voluntary water marketing. It should now certify that such voluntary transfers of Federally supplied water are indeed permissible and should establish rules to protect public and other third-party users of water.
>
> The U.S. Department of Interior should work on issuing a generic policy statement affirming the transferability of contractual rights to reclamation water supplies. The Department currently responds to individual proposals for transfers, but contractors who are unsure what answer they will get hesitate to make requests in the first place.

So, Mr. Chairman, advocating reclamation reform and efficient use of water does not mean "cutting reclamation farmers off at the knees" or depriving them of

water. Rather, access to that water ought to be recognized and treated as a property right they hold, subject to trade, lease, or sale. Doing so would protect the environment and individual farmers, and foster economic growth.

Mr. Chairman, reclamation helped settle the West. But times have changed. So, too, must reclamation policy. Resistance even to incremental change makes that policy increasingly out of touch with its original mission and new economic, agricultural, and environmental concerns. Increasingly, the policy becomes more and more difficult to justify—particularly in an era of severe federal budget deficits, when every program—and every dollar spent—has to bring maximum returns to the Federal Government and the American taxpayer. I wholeheartedly support your efforts to ensure that reclamation doesn't wither on the vine of spendthrift, illogical federal policy.

021012.671 S.L.C.

101ST CONGRESS
2D SESSION

S. 2941

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IN THE SENATE OF THE UNITED STATES

for himself and Senator Kohl
Mr. HEINZ introduced the following bill; which was read twice and referred to the Committee on _____

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# A BILL

To reform and restore integrity to the Federal reclamation system.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Reclamation Reform and Integrity Act of 1990".

**SEC. 2. CAPITAL COST RECOVERY.**

Section 208(a) of the Reclamation Reform Act of 1982 (96 Stat. 1261) is amended by adding at the end thereof the following: "Such price shall also be sufficient to recover an appropriate and substantial share of the fixed

costs of construction of works connected with water supply and allocated to irrigation.''.

SEC. 3. FAIR MARKET VALUE FOR SALES OF LAND.

(a) EFFECTIVE DATE.—Section 209(f)(2) of the Reclamation Reform Act of 1982 is amended by striking ''the date of enactment of this Act, '' and inserting ''October 12, 1982 but before the enactment of the Reclamation Reform Act Amendments of 1990''.

(b) FAIR MARKET VALUE.—Section 209(f) of such Act is further amended by adding at the end the following:

''(3) In the case of disposals of excess lands, including such land not under recordable contracts, made on or after the enactment of the Reclamation Reform Act Amendments of 1990, the disposal of excess lands to nonexcess owners shall be for fair market value, related to the delivery of irrigation water, which shall be deposited in the Treasury of the United States as miscellaneous receipts. Upon such disposal the title to these lands shall be freed of the burden of any limitations on subsequent sale values which might otherwise be imposed by the operation of section 46 of the Act entitled 'An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes,' approved May 25, 1926 (43 U.S.C. 423e).''.

SEC. 4. REPEAL OF WATER SERVICE CONTRACT RENEWALS.

Section 1(1) of Public Law 84–643 (43 U.S.C. 485h-1(1)) is hereby repealed.

SEC. 5. MARKET PRICES IN COST—BENEFIT ANALYSIS.

Notwithstanding any other provision of law, the Secretary of the Interior shall evaluate all unstarted reclamation projects in accordance with the Statement of Procedures adopted in June 1987 by the Assistant Secretary of the Department of Agriculture, the Acting Assistant Secretary of the Department of the Army, the Washington Representative of the Tennessee Valley Authority, and the Assistant Secretary of the Department of the Interior.

SEC. 6. COST FOR DELIVERY OF WATER USED TO PRODUCE THE CROPS OF CERTAIN AGRICULTURAL COMMODITIES.

Section 9 of the Reclamation Projects Act of 1939 (43 U.S.C. 485h) is amended by inserting at the end thereof the following new subsection:

"(g)(1) All contracts entered into, renewed, or amended under authority of this section or any other provision of Federal reclamation law after—

"(A) 2 years after the date of enactment of this subsection shall require that the organization agree by contract with the Secretary to pay at least 50 percent of full cost for the delivery of water used in the production of any crop of an agricultural commodity

for which an acreage reduction program is in effect under the provisions of the Agricultural Act of 1949; and

"(B) 4 years after the date of enactment of this subsection shall require that the organization agree by contract with the Secretary to pay at least full cost for the delivery of water used in the production of any crop of an agricultural commodity for which an acreage reduction program is in effect under the provisions of the Agricultural Act of 1949.

"(2) The Secretary shall announce the amount of the full cost payment for the succeeding year on or before July 1 of each year.

"(3) As used in this subsection, the term 'full cost' shall have the meaning given such term in paragraph (3) of section 202 of the Reclamation Reform Act of 1982.

"(4) This subsection shall not apply to—

"(A) any contract which provides for irrigation on individual Indian or tribal lands on which repayment is deferred pursuant to the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386(a), commonly referred to as the 'Levitt Act');

"(B) an amendment of any contract with any organization which, on the date of enactment of this subsection, is required pursuant to a contract with

the Secretary as a condition precedent to the delivery of water to make cash contributions of at least 20 percent of the cost of construction of irrigation facilities concurrently with the construction of such facilities by the Secretary; and

"(C) any contract which carries out the provisions of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99-294; 100 Stat. 418).".

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

# STATEMENT OF PROCEDURES

## (JUNE 1987)

Pursuant to Section 2.3.3(b) of the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (March 10, 1983), Federal water resource agencies use normalized commodity prices issued periodically by the Department of Agriculture to evaluate the National Economic Development (NED) agricultural benefits of water projects. This joint statement sets forth procedures to be used by the Departments of Agriculture, Army, and Interior, and the Tennessee Valley Authority (TVA) for implementation of Agriculture's new normalized prices issued under Section 2.3.3(b) of the Principles and Guidelines.

## PURPOSE

The Department of Agriculture provides commodity prices to Federal water resource agency planners for the purpose of estimating benefits from water projects. In the past, these prices included an upward bias, reflecting the impact of the Government's own price support programs for surplus crops. In

the 1970's, this was small. Today, as all of us are aware, the bias has become significant. This results in project benefits to society from production of surplus crops being overestimated, making uneconomic projects appear economically justified.

The Department of Agriculture has the necessary analytical capabilities, combining both sophisticated models and mathematical techniques, to remove the effects of Federal subsidies from the prices of agricultural commodities. The new prices will help to assure that only those agricultural development water projects that actually produce a net increase in the real output of the Nation are supported for construction.

Agriculture first promulgated a list of its new normalized prices on March 31, 1987. By June 30, the Department will revise and reissue this list to show prices with and without subsidy effects for all displayed commodities.

IMPLEMENTATION

Effective immediately, Agriculture, Army, Interior, and TVA will use the new normalized prices to evaluate all unstarted Federal water resource projects with agricultural development benefits, consistent with the schedule and definitions contained in the Office of Management and Budget's June 2, 1987, letter to each agency.

Project outputs (benefits) from "program commodities" will be evaluated using the program-free prices. Outputs from "non-program commodities" will be evaluated using the prices

based on long-run market prices with Government programs. Program commodities are defined as commodities for which a Department of Agriculture acreage-reduction, price-support, marketing loan, or deficiency-payment program is in effect for the year when the normalized prices are promulgated.

All agencies should use the normalized prices based on market conditions with Government programs for all commodities (program and non-program) to (1) establish the "with" and "without" project conditions, as called for under the Principles and Guidelines, and (2) calculate a farmer's or irrigator's "ability to pay," where required to make this calculation under current law.

FUTURE ACTIONS

The agencies will continue to advise and consult on revisions improving the accuracy, reliability, and consistency of Agriculture's normalized prices and on use of program-free price estimates in benefit evaluations involving non-program commodities, like hay and beef cattle.

GEORGE S. DUNLOP
ASSISTANT SECRETARY
NATURAL RESOURCES AND ENVIRONMENT
U.S. DEPARTMENT OF AGRICULTURE

JOHN S. DOYLE JR.
ACTING ASSISTANT SECRETARY
DEPARTMENT OF THE ARMY

KENNETH E. GRAY
WASHINGTON REPRESENTATIVE
TENNESSEE VALLEY AUTHORITY

JAMES W. ZIGLAR, ASSISTANT SECRETARY
WATER AND SCIENCE
DEPARTMENT OF INTERIOR

Senator BRADLEY. Thank you, Senator Heinz.
Senator Exon.

## STATEMENT OF HON. JAMES J. EXON, U.S. SENATOR FROM NEBRASKA

Senator EXON. Mr. Chairman, thank you very much. I appreciate the opportunity to come before you here today.

I speak not only for myself, but my colleague, Senator Kerrey, who read the statement that I am about to deliver and ask that he be recognized as agreeing with the statements that are submitted today, both from the senior and junior Senator from that State.

The Bureau of Reclamation has been a very important entity to Nebraska and I have been a strong supporter of that over the years. Bureau projects do more than make crops grow. They make it possible for schools and hospitals and roads to grow where previously there was dry land and stunted crops. I cannot overstate the importance of the Bureau of Reclamation to the areas of Nebraska.

I would like to begin my testimony by inserting in the hearing record at this time a copy of a recent article by Jack Anderson and Dale van Atta. I would like that to be included at this point.

Senator BRADLEY. It will be included in full.

[The article referred to follows:]

Washington Post
June 28, 1990

NGTON POST 41 42 47 . THURSDAY, JUNE 28, 1990 Va. 19

JACK ANDERSON and DALE VAN ATTA

# Corporate Farms Soaking Up Subsidies

A handful of thirsty corporate farmers are robbing the taxpayers and the U.S. Treasury of millions of dollars in cheap irrigation water because federal regulators refuse to do their job.

Big western landowners have managed to sop up most of the benefits of a public water program that was designed to help the little guy.

At the turn of the century, Congress decided to encourage family farmers to make the western deserts bloom. The Bureau of Reclamation was established and water projects cropped up all over the West to irrigate family farms. The promise was that the taxpayers would pay part of the water bill. In its naivete, Congress thought that if it set a 160-acre limit on the farms that got subsidized water, only small farmers would benefit.

But Congress didn't reckon with the ingenuity and greed of corporate farms, nor did Congress imagine that the Bureau of Reclamation, which was supposed to regulate the program, would crawl in bed with the big farmers.

Earlier this month, an older and wiser House of Representatives voted to change the rules to prevent the big corporations from scamming the government. A similar bill is pending in the Senate. But judging by the record of the corporate farmers, they will soon find a way to get around the new restrictions, and the Bureau of Reclamation will look the other way.

Large landowners used to skirt the 160-acre limit by leasing their big farms in pieces to smaller operators. Congress caught on in 1982 and tightened the rules. At the same time, Congress acknowledged that the 160-acre limit may be too strict, and raised the maximum to 960 acres.

The big farmers simply changed their tactics. They now organize their land in a patchwork of trusts, partnerships and corporations, each owning 960-acre farms.

In one case, eight "farmers" signed up for subsidized water from a water district in California. The names were different, but the phone numbers and addresses were the same. Each claimed to be a separate farm, but in reality one land company was sucking up cheap water for 6,730 acres.

Wade Hill, 63, grows potatoes, lettuce and wheat on 160 acres in the San Luis Valley of Colorado. He irrigates his farm from a private water project built nearly 100 years ago, and it burns him up to see wealthy farming corporations soaking in subsidized water. Hill says he can't compete when he pays for his own water and the big companies hit up the taxpayer for the bill. Hill has a word for what's happening—"Farmgate."

Phil Doe, who used to head the Bureau of Reclamation office that wrote the water rules, told our reporter Melinda Maas that the agency is as guilty as the farmers. "The water users and regulators have a cozy relationship paid by taxpayers," Doe said. "Many bureau officials go to work for them [the farming industry] when they leave government."

Doe claims that the Bureau of Reclamation protects its friends by writing flimsy rules. When Doe tried to tighten those rules, he was transferred. He now works in a toxic waste unit, an area he knows little about.

Senator EXON. It is entitled, "Corporate Farms Soaking Up Subsidies." It talks of one company sucking up cheap water for its 6,730 acres. It is representative of the bad ink that is being used over and over again to plague the Bureau, especially in recent years.

I assure you that to the best of my knowledge the shenanigans outlined in this article are not occurring in my State of Nebraska.

Unfortunately, here we have an agency which has done so much for so many family farmers in Nebraska and elsewhere, and it is, if you will pardon the pun, being dragged through the mud. Critics are slashing the Bureau of Reclamation to shreds without fully appreciating all the good it has done. Sooner or later it will come back to haunt legitimate operations like those in Nebraska and elsewhere. Now is not the time to abandon irrigators or retreat from the good work of the Bureau of Reclamation in what it has done over the years.

We need to restore the Bureau's credibility before we lose the whole program. The backlash from bad publicity is clearly evident. The House, not long ago, approved what is likely to be a very hostile change.

Senator MCCLURE. Excuse me. Mr. Chairman, could I interrupt? I had hoped to be able to ask Senator Heinz some questions.

Senator HEINZ. Whatever you want to do.

Senator MCCLURE. I just did not want the opportunity to pass.

Senator EXON. I am glad to interrupt my testimony.

Senator BRADLEY. If the Senator would like to take the Chair. We have been handed a note saying there is a roll call vote coming up on the Bentsen amendment. It will not, I think, be long. If you would like to—my hope was to hear from all three Senators.

Senator HEINZ. My plan is to come back.

Senator BRADLEY. Senator Exon?

Senator EXON. That vote was 338 to 35 for the Gejdenson amendment. We had a similar close call during the Senate consideration of the 1990 farm bill and I appreciate your joining me, Mr. Chairman, in derailing that attempt.

There are two fundamental issues involved in this debate, the 960-acre limitation and the so-called Gejdenson proposal that would force farmers to choose between reclamation water or farm programs.

As you know, Congress, in 1982, raised the amount of the land eligible for the Bureau of Reclamation water from 116 to 960 acres for farming operations. This was a prudent step in light of the increasing size of family farms. Unfortunately, this 960-acre limitation has been abused in some regions. In clarifying this point of law, however, I want to be sure that the genuine family farm operations are not inadvertently injured.

Mr. Chairman, I would lastly ask that the rest of my remarks be printed in the record at this point.

[The prepared statement of Senator Exon follows:]

PREPARED STATEMENT OF HON. JAMES J. EXON, U.S. SENATOR FROM NEBRASKA

Senator Bradley, I very much appreciate your invitation to testify before the Subcommittee on water and power. The Bureau of Reclamation has been very important to Nebraska and I have been a strong supporter over the years. Senator Kerrey

asked me to convey to you his concurrence and support for the remarks I am about to make. He has other obligations this afternoon and will not be able to join us, but I assure you he feels strongly about protecting Nebraska irrigators.

Bureau projects do more than make crops grow—they make it possible for schools and hospitals and roads to "grow" where previously there was dry land and stunted crops. I cannot overstate the importance of the Bureau of Reclamation to areas of Nebraska.

I'd like to begin my testimony by inserting in the hearing record a copy of a recent article by Jack Anderson and Dale Van Atta. It is titled "Corporate farms soaking up subsidies". The article tells the story of one land company "sucking up cheap water for 6,730 acres". It is representative of the "bad ink" that has plagued the Bureau in recent years.

I assure you that to the best of my knowledge, the shenanigans outlined in that article are not occurring in Nebraska.

Unfortunately, here we have an agency which has done so much good for so many family farmers in Nebraska and other states, and it is, pardon the pun, being drug through the mud. Critics are slashing the Bureau of Reclamation to shreds without fully appreciating all the good it has done. Sooner or later it will come back to haunt legitimate operations like those in Nebraska.

Now is not the time to abandon irrigators or retreat from the good work the Bureau of Reclamation has done over the years. We need to restore the Bureaus credibility before we lose the whole program.

The backlash from bad publicity is clearly evident. The house not long ago approved what I consider to be a very hostile change when it voted 338-35 for the Gejdensen amendment. We had a similar close call during Senate consideration of the 1990 Farm Bill and I appreciate your joining me in derailing that attempt.

There are two fundamental issues involved in this debate—the 960-acre limitation and the so-called Gejdensen proposal that would force farmers to choose between Reclamation water or farm program participation.

As you know, Congress in 1982 raised the amount of land eligible for Bureau of Reclamation water from 160 to 960 acres per farming operation. This was a prudent step in light of the increasing size of family farms.

Unfortunately, this 960-acre limitation has been abused in some regions. In clarifying this point of law, however. I want to be sure that genuine family farm operations are not inadvertently injured.

Take, for instance, the case of a father and son who have totally separate farms in terms of management and financing, but perhaps co-own equipment. Such arrangements are fairly common given the cost of modern farming equipment. Clarifications in the law should not alienate these kinds of legitimate family farm operations and I stand ready to help develop legislation that meets this goal.

The second point of contention is the proposal that forces farmers to choose between farm program participation or pay "full cost" for Bureau of Reclamation water. I realize your bill, S. 2659, does not include this provision. It seems clear, however, that this issue will again be foisted upon the Senate for debate at some later time. Jacking up the price of water to meet some ill-defined "full cost" target is unfair from several perspectives.

Farmers in Nebraska have limited cropping options. Our farmers are working to diversify, but for now we can't expect them to switch from corn or beans or sorghum to lettuce and celery and kiwi fruit. If it were that simple, they would have abandoned program crops and all the red tape that goes with them a long time ago.

The "full cost" concept is not fair even between farmers in the same geographic area. For example, full cost water from different projects in the same area can range from $10 per acre to $780 per acre. Mr. Chairman, you can't grow $3 corn with $780 water and make it work. In an effort to maintain their eligibility for Reclamation water, some farmers may be forced to opt out of federal farm programs. Such a move would limit the effectiveness of our production adjustment programs when farmers are forced to plant fence-row-to-fence-row.

The other option would be for farmers to switch from Bureau-supplied surface water to groundwater. This option would further exacerbate groundwater depletion problems as additional wells are sunk to replace surface water.

Mr. Chairman, any changes proposed for the Bureau of Reclamation must be carefully considered and I will certainly be reviewing any legislation put forward by this Subcommittee with a critical eye. We need to restore credibility without pulling the rug out from under the family farmers that the Bureau of Reclamation was originally intended to serve. I look forward to working with you toward that end in the weeks to come.

Senator EXON. Let me just summarize, if I could, that when you talk about full cost concept, it is not fair even between farmers in the same geographical area. For example, full cost water from different projects in the same area can range from $10 an acre to $780 per acre.

Mr. Chairman, you cannot grow corn with $780 water and make it work. I simply say that I pledge to work with the Chairman and this committee to make some corrections that I think you intend to make.

I note with great interest, Mr. Chairman, that you are not proposing in the legislation that you have introduced or are about to introduce, that goes as far as what I am afraid that my friend and colleague from Pennsylvania would like to see. As I understand it, you are only addressing and enforcing the law, which I think was a good one that we passed some time ago, on the number of acres that can be planted. And stop, stop forever, this business of people taking advantage of that by chopping up their farms and getting around the law. That has to stop.

I congratulate you for that effort. I will continue to work with you on that behalf.

Senator BRADLEY. Thank you, Senator Exon. I think you hit the exact point here. The point is stopping abuse of the subsidy limitation, not that farms 960-acre or less should lose their subsidized water.

Senator Daschle.

## STATEMENT OF HON. THOMAS A. DASCHLE, U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. Thank you, Mr. Chairman. I know we are short on time, so I would ask that my entire text be made a part of the record. I will be very brief in making a couple of points.

Senator Exon really took the words out of my mouth in the last couple of sentences of his testimony. That is the commendation for you, as Chairman, for your effort to enforce current law. That really is the cornerstone, as I understand it, of your legislation—to reform the system and not to eliminate it, as some might propose that we do, as we consider reclamation law in the future.

I read the General Accounting Office reports and the Sierra Study on abuses. I have seen the television reports and I have read the newspaper accounts, one of which Senator Exon has made a part of the record. But I want to tell you with each one of these reports, which each one of these news accounts, South Dakota and many other States in the West are suffering the consequences. We have become the victims of the reported abuse. We have become the very victims of those who, for whatever reason, are motivated to bring this abuse to light.

South Dakota does not have abusers as we may have in other parts of the country. And yet South Dakota, like a lot of other States, are paying for the sins of others.

Congress has not passed a straight irrigation system in 15 years. The reclamation is often viewed as a result of these reports as synonymous with waste, fraud, and environmental ruin. And unless these abuses are brought to light and eliminated, which is what I

understand you are trying to do, States like South Dakota will continue to be shut out of the benefits that the system can and should provide.

S. 2659 is an attempt to make the system work better. It is far preferable, in my view, to the House version which eliminates participation of both Federal water and crop commodity programs, which I believe is overkill and which will put hundreds of farmers out of business as has been indicated by other comments already this afternoon.

The double subsidy issue should be addressed in new projects as it is in the Lake Andes-Wagner/Marty II project which limits payments to dry land value of crops. The Lake Andes-Wagner/Marty II project is a perfect example of what the reclamation should be about. It is a small-scale riverside project. It has an excellent cost-benefit ratio. It benefits the family farmer. Even selenium problems, which lead to groundbreaking research and additional environmental safeguards truly make the project a model, are included in this particular proposal.

Mr. Chairman, we have discussed this. And I am pleased that among your panelists this afternoon you will have Mr. Leo Holzbauer here to talk about the Lake Andes project as it relates to your legislation. He has irrigated land all of his life. He has devoted a large portion of his life to making the Lake Andes-Wagner project a reality. And I think his insights in this context will be very helpful.

The bottom line, Mr. Chairman, is that we do need to address abuse. We do need to better enforce the law. But we also need to ensure that we all understand and appreciate the value of the reclamation system as it exists, especially in the Western United States.

[The prepared statement of Senator Daschle follows:]

PREPARED STATEMENT OF HON. THOMAS A. DASCHLE, U.S. SENATOR FROM SOUTH DAKOTA

Mr. Chairman, thank you for giving me the opportunity to testify today on the subject of reclamation reform, and, in particular, S. 2659 and H.R. 2567. I am aware of the large number of people who want to testify on this subject, and I will keep my remarks brief.

I wish to commend the chairman for holding this hearing, and for his longstanding commitment to comprehensive review of the current reclamation system. I believe that the chairman's concerns are real, that he is honestly out to reform the system and not kill it, and that this critical examination is healthy. I am hopeful that the result of this effort will be a better fundamental understanding of reclamation in this country that will focus the program on helping the many small family farmers who need the program's benefits.

I have read the recent Government Accounting Office reports on the reclamation system. I have read the recent CRS study on reclamation reform. I have seen the television and newspaper accounts of a system that has gone awry. While I cannot speak to the validity of specific abuses, or on the extent of the problem across the nation, I would like to take a moment to share with the subcommittee my assessment of my state's recent frustrations with the reclamation program.

In South Dakota, we do not have the abuses that are the subject of this hearing. We would not be adversely affected by reforming loopholes in the 960 acre rule. Yet, while no action in South Dakota has reflected badly on the reclamation system, the small farmers of the state have paid for the sins of others, be they real or perceived sins.

Congress has not passed a straight irrigation system in more than 15 years, and reclamation is now viewed as a synonym for government waste and environmental ruin. This is far from the original goals of the reclamation system, which was de-

signed to help promote development of the west by bringing water to small family farmers.

Helping the small family farmer is what the reclamation system can and should be.

The simple fact is that the good that the Bureau of Reclamation and the reclamation system can do for rural America has been lost for states like South Dakota that still need reclamation. Until the abuses of the system are brought to light and eliminated, South Dakota and other states where reclamation can and will work will be shut out.

I think that the chairman's bill, S. 2659, is a thoughtful and thorough attempt to make the system work without penalizing legitimate users. Far more onerous are the amendments from the House of Representatives, especially the requirement that prohibits participation in both federal water and federal commodity programs. This stipulation is a classic case of overkill. It changes the rules on many projects across the nation and effectively would put hundreds of small farmers out of business.

Nonetheless, the "double subsidy" issue is a legitimate one that should be addressed in new projects. I believe that the model created in my legislation to authorize the Lake Andes-Wagner/Marty II project in South Dakota could serve as an example. Under the provisions of this bill, crop payments on federally irrigated acres would be limited to the dry land value of the crops. This is fair—a complete elimination of crop subsidy payments on existing federal projects is not fair and would do great harm.

The Lake Andes-Wagner/Marty II project is an excellent example of what we are discussing today. If any irrigation project should have ever been built, it is Lake Andes-Wagner, which is a small scale, riverside project, with an excellent cost-benefit ratio, designed to benefit small family farmers. Even with the discovery of selenium in the region, the ground-breaking research program and environmental safeguards now built into the project make it a model. But the project has languished for 20 years while concern about irrigation in other areas of the country turned into outright indignation, which has poisoned the environment for positive irrigation projects.

As I mentioned to you this morning, Mr. Chairman, Leo Holzbauer, my constituent and chairman of the Lake Andes-Wagner project, is in Washington visiting, and I have asked him to come here with me today. I wonder if at some point during today's proceedings Mr. Holzbauer might be allowed to say a few words about how a person who has been irrigating his own land all his life, and who has put his heart and soul into making the Lake Andes-Wagner project a reality, views reclamation reform. I know that this request is irregular, but I think the Subcommittee might find his remarks interesting.

Thank you, Mr. Chairman, for the opportunity to testify today. I appreciate your sincere effort to make the Bureau of Reclamation and the reclamation system work for America again, and I would be happy to answer any questions that you may have.

Senator BRADLEY. Senator Daschle, let me thank you for your testimony and for your understanding of the bill.

Senator Exon, let me thank you as well for your testimony. I have no questions.

Senator MCCLURE. I have no questions for either of these witnesses. I want to thank you for your testimony, however. I appreciate the fact that you come from an area that has reclamation projects and that has irrigated farmland as well as dry farmland. You understand some of the needs of agriculture as the families experience it in farming.

I might have just one general question. Because I do not know your State, obviously, as well as I know my own, do either of you have farmers who exchange labor?

Senator DASCHLE. To my knowledge, we do not have farmers who exchange labor.

Senator MCCLURE. It is not at all an uncommon practice in my area of the world. Do either of you have farmers in your State who exchange the use of equipment?

Senator DASCHLE. We do have farmers, to a certain extent, who exchange the use of equipment.

Senator EXON. In my prepared statement, Senator McClure, that is a good question, I pointed out that it is quite common in many instances for father and son or maybe two brothers to use, at least partially, the same equipment. In other words, if you have got two brothers that farm in the same neighborhood, they likely would not both buy combines.

And so I think we have to make some exclusions in this bill and recognize that that is a part of the way of life today, given the ever increasing high cost of producing food. I think we have to address that.

Senator MCCLURE. And you also have the situations in a family lives upon a farm and Mom and Dad move to town, or there is a death in the family, and yet that is the only for instance, a death in the family, the only income left for the widow is the income that comes from the farm and she makes arrangements for somebody to farm the land, and the income flows through to her. Is that correct?

Senator DASCHLE. That is correct.

Senator EXON. That is correct.

Senator MCCLURE. That is not at all uncommon?

Senator EXON. Not at all.

Senator MCCLURE. Now the person who farms that land may also be another farmer in the area, a member of the family or some other farmer in the area, is that not correct?

Senator DASCHLE. Oftentimes a member of the family.

Senator MCCLURE. Oftentimes a member of the family, and sometimes that is not available, and then the neighbor next door, down the road a little ways, will farm that land for that person because it is the continuation of their life during the balance of their life.

Senator DASCHLE. That is correct.

Senator CONRAD. Senator McClure, if you would just yield before we lose Senator Daschle, on one point—that Senator McClure, if instead of asking if they exchange labor—if you stated that in a different way, I think you would get a different answer from Senator Daschle. If we asked him is it not common practice for family members who may own separately land to farm it together? Is it not common for them to use machinery that might be owned by the father or brother? That is not that all uncommon.

Senator DASCHLE. That is common. I was not as familiar with the term "exchanging labor." I do not think we call it that in South Dakota, but we certainly share the workload. And neighbors and family members alike are very frequently involved in operations in the neighborhood, in the area. It is very common practice. It has to be, especially when it comes to harvesting. Harvesting and even planting, to a large extent, is a shared responsibility in the area.

Senator BRADLEY. The Chair will simply note that the bill does not prevent exchange of labor or equipment. It simply limits the delivery of subsidized water to farms 960 acres or smaller.

Any further questions of the panel?

Senator HEINZ. Senator McClure has one, I think.

Senator MCCLURE. I have more than one. Will it be possible for you to return after the vote?

Senator HEINZ. No.

Senator MCCLURE. Senator Heinz, your concern seems to be double subsidy. Do you think the farmers being allowed to depreciate equipment is a subsidy?

Senator HEINZ. No.

Senator MCCLURE. Do you think that participation in the Farmers' Home Loan program is a subsidy?

Senator HEINZ. I am not sufficiently familiar with the current financing of it to express an informed opinion as to how much of a subsidy, if at all, if there is one.

Senator MCCLURE. I am certain you are aware that there are some farmers who would not be farming except for flood control expenditures by the Corps of Engineers. Do you think that that is a subsidy?

Senator HEINZ. No.

Senator MCCLURE. How do you distinguish between a subsidy which is repaid over time, even without interest, and a subsidy which is never repaid by direct beneficiaries? Or does the answer depend upon which region of the country you are in?

Senator HEINZ. Senator McClure, it does not depend upon which region of the country you are in. The focus of the legislation that I have introduced is aimed at reconciling two existing Government programs just the way we reconcile issues involving people who were in the military and then retired and attempted to get full Social Security benefits. This is aimed at a very large program, the agricultural program, $50 billion, is what was just enacted.

It seems to me that people who have water rights are, as the Congress should decide, perfectly entitled to keep those water rights, to keep their reclamation water and so forth. But that does not entitle them necessarily to the full benefit of a lot of other subsidies. That is a judgment for the Congress to decide. I can understand that you may or may not agree with it, but it is a legitimate issue.

Senator BRADLEY. Senator Heinz, I am going to have to, at that, gavel the committee into recess if we are going to make the vote. I know that Senator McClure had a whole number of other questions.

Senator HEINZ. I would be happy to respond in writing.

Senator BRADLEY. That will be appropriate.

The committee will stand in recess for 10 minutes until the Chair returns.

[Recess.]

Senator BRADLEY. The subcommittee will return to order. We have a number of Congressmen who have expressed a desire to testify—Congressman Pashayan.

Senator MCCLURE. Congressman Rhodes asked that his statement be inserted in the record in full. I think he had to leave.

Senator BRADLEY. All right. We will put Congressman Rhodes' statement in the record.

[The prepared statement of Mr. Rhodes follows:]

PREPARED STATEMENT OF HON. JOHN J. RHODES III, U.S. REPRESENTATIVE FROM ARIZONA

Mr. Chairman, I appreciate this opportunity to submit a statement regarding S. 2659 and H.R. 2567, to amend the Reclamation Reform Act (RRA).

Today you will hear expert and detailed testimony from Mr. Grant Ward, Executive Vice President of the AgriBusiness Council of Arizona, Inc. I commend to you the important issues that are contained in Mr. Ward's testimony.

For my part, I want the Committee to fully understand and appreciate the difference between reclamation projects that provide supplemental water and those that provide replacement water. It is an important distinction.

The Central Arizona Project (CAP) provides replacement water, on an acre-foot for acre-foot basis, in-lieu of pumping Arizona groundwater. In California, where most of the RRA controversy appears to be, reclamation projects provide supplemental water. In the Central Valley Project in California, the so-called subsidized cost of water is between $2 and $17 per acre-foot. In Arizona's CAP, the subsidized cost of water is $40 to $45 per acre-foot.

In the Central Valley Project, a project farmer farming in excess of 960 acres he owns would pay approximately $40 an acre-foot for "full cost" water; $10 to $20 below the subsidized cost of CAP water. However, a CAP farmer farming in excess of 960 acres paying "full cost" would pay $250 an acre-foot. Quite a difference. I should also point out that CAP water cannot be used to create new farmlands and is available, as replacement water, only to those farms operated during the ten years prior to 1968 and operated during the five years prior to the adoption of the 1980 Arizona Groundwater Management Act.

Payment of full cost rates by agricultural interests in Arizona is not a viable option. Faced with the prospect of paying $250 an acre-foot of CAP water, or going out of business, or turning their groundwater pumps back on, those farmers will turn on their pumps and start again further depleting the precious groundwater resources Arizona has worked so hard to protect. Even Congressman George Miller has praised Arizona's landmark groundwater management law. The legislation before you could well destroy the intent of Arizona's Groundwater Management Act. It could also threaten the ability of irrigation districts, who have bonded themselves to make advance cost-sharing and construction commitments, to repay their obligations.

So narrowly limiting family farming operations by defining a landholding as any land that is "owned, operated or leased" by a single person, could exclude perfectly legitimate family farm operations and would surely make such legitimate operations uneconomical. The same can be said of the provision in S. 2659 identifying an operator based on decision making and supervision "at a given point in time". That is very vague and undefined language. Such language strikes at the heart of traditional neighbor and family farms where professional services, sharing of equipment or even accountants, are the basis of sustaining an economic farming operation.

I am also very concerned about the potential impact of this legislation on Indian farmers who also rely heavily on custom farming services provided by non-Indian farmers. The potential impact is to put in question existing and future Indian water settlements.

These are some of the concerns I have regarding this legislation. I would hope the Committee would listen to and consider carefully the testimony you will hear today and appreciate the distinctions that are made regarding the impacts of this legislation.

Thank you for your courtesy.

Senator BRADLEY. Senator Wirth.

## STATEMENT OF HON. TIMOTHY E. WIRTH, U.S. SENATOR FROM COLORADO

Senator WIRTH. Thank you, Mr. Chairman. I know you have other witnesses here. I just wanted to say as a preliminary to this, it is going to be, obviously, a very interesting hearing.

But, one, I think as a general proposition that you are on the right track on the acreage limitation amendment which you have offered—one of those. And, on the other, the so-called double subsidy issue, I think the people trying to discuss the double subsidy

issue really do not understand that these are two totally separate programs with two totally separate purposes.

If those who are talking about double subsidy want to change the overall farm support program and think that is inappropriate, they should go ahead and do that. If they do not like the Bureau of Reclamation programs, they ought to go about doing that. But to try to tie the two together just does not fit. Obviously, we have some explanation to do on that front.

I know you had quite a discussion on that earlier and I stand ready to help in any way I can to try to explain to people the dichotomy between the two.

I thank you very much for having this hearing, Mr. Chairman, and pushing this agenda.

Senator BRADLEY. Thank you very much, Senator Wirth.

Congressman, welcome to the subcommittee. The floor is yours. Keep in mind that there are a lot of people who have come long distance and they are all behind you. Some of them may be your constituents. We want to hear from you, though. Please feel free to say whatever you would like.

## STATEMENT OF HON. CHARLES PASHAYAN, JR., U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. PASHAYAN. Thank you, Mr. Chairman, having made the vote on the House side with no time left on the clock, I assure you I think I came a long distance, too.

Senator BRADLEY. We also want to welcome Congressman Herger to the subcommittee, who we will hear from immediately following your testimony.

Mr. PASHAYAN. Mr. Chairman, I do have a prepared statement and I ask unanimous consent that it be put into the record.

Senator BRADLEY. Your statement will be put into the record.

Mr. PASHAYAN. I also wish very much to associate myself with the remarks of the Senator from Idaho. I thought his remarks were absolutely on point. He and I worked very hard in 1982 when we reformed the act. I appreciate the chart that he has brought here, Mr. Chairman. I am sure that with your scholarly background that you will spend many enjoyable hours studying the chart, as I am sure I will.

Mr. Chairman, I was interested in those parts of your opening remarks where you said that you had a very narrow interest in mind here, your purpose was, at least I thought I heard you to say that. And with all due respect, I should like to offer the perspective, however, Mr. Chairman, that your legislation is perhaps much broader than what I heard you say you intended. Some are even tempted to say that it is really more radical than a conservative kind of an amendment.

Mr. Chairman, in 1982—and I am just going to talk free-flow for a few minutes—there were a lot of divergent interests that eventually came together and left a lot of things on the table. The 1982 Reclamation Reform Act, as you know, Mr. Chairman, the first major reform act in 80 years, represented a remarkable compromise. A lot of the ideas contained in the Senate bill and in the version passed by the House are not really new, but as the Senator

from Idaho pointed out, were ideas that we consciously attempted to deal with and then rejected because they simply were not workable.

I say that this is a radical approach because now, at least from my perspective, what I see happening is that there are those coming back and saying, well, we had this 1982 law. It was a broad and intricate compromise. Let us just go back and change a few things without changing anything else. Let us tinker here and not there.

Now, Mr. Chairman, the 1982 law sent the benefit to the recipient and I would like to go into this just for a minute because I think it is important. It permeates throughout this entire problem. It is the recipient, by force of the 1982 law, that is to get the benefit of the water. The benefit, obviously, is the cost of water, less than full cost. Now, the size of the benefit is defined in terms of acres. But the point is the benefit does not go to the land, it goes to the recipient. And really that reflected what had been the law and the practice ever since 1902.

We hear the word abuse thrown around. And yet, Mr. Chairman, I would put to your subcommittee which of that abuse actually represented a break in the law. I remember questioning Secretary Andrus leading up to the 1982 reform bill. And after some two or three questions, he finally was saying that a certain water district that was the subject of a certain television program was not in violation of the law. I believe that this GAO report has said that largely the law has been met; that there is not a violation of the law. And so, when I hear the word "abuse" thrown around, Mr. Chairman, I sort of am a little concerned because it is easy to—this is a complicated subject—it is easy to confuse people.

Let me talk about one very pointed thing. There was a sale under the 1982 act of a large farm in my district that has gotten, I think, an undeserved, widespread, and undeservedly negative attention simply because the company that owned it, the Bosweli Company, is a large operation.

Senator BRADLEY. What is the size?

Mr. PASHAYAN. The transaction, Mr. Chairman, that I am talking about is, let us call it, between 22,000 and 23,000 acres. That farm is no longer owned by the Boswell Company, Mr. Chairman, they have divested themselves. They retain no legal way to get any of it back. It was sold to the bank as trust for their employees—some 326 employees.

Mr. Chairman, these employees, many of them, most of them, are blue-collar, hardworking tractor drivers, mechanics, irrigation workers, secretaries, and some junior executives. They are the beneficiaries of this trust that, as you know, is regulated by State law, in this case, the trust law of California. The Department of the Interior decided that that was a legal transaction. I agree with their decision. There is subsidized water going to that 22,000 acres. The average size of the benefit per beneficiary is less than 80 acres.

None of these people, Mr. Chairman, could have ever afforded to go out and purchase 80 acres or more of land on their own. They just simply were not in that economic situation. And now they are the beneficiaries of a trust that will, by its own terms, expire some 9 or 10 years hence. If this committee passes the law as it is now

worded, it will remove the benefit to those 326 employees and you would be taking the money out of their pockets.

Senator McCLURE. Could I interrupt for just a moment? Just in the interest of clarity, a statement that he made might be misunderstood by someone. You said the trust would, by its terms, expire in 9 or 10 years; it expires by vesting in them individually the ownership of the property? Is that not correct?

Mr. PASHAYAN. Thank you. The Senator always thinks these things through thoroughly. That is correct. The trust expires and the equitable title then goes from the bank, the trustee, to these 326 people.

Mr. Chairman, I think it would be a tragedy. And I should like to put in the record a letter written to me very quickly and signed by just a handful of these 326 employees.

Senator BRADLEY. It will be in the record in full.

[The letter referred to follows:]

LEMOORE, CA, *July 27, 1990.*

Hon. CHARLES PASHAYAN, JR.,
*U.S. House of Representatives, Washington, DC.*

DEAR CONGRESSMAN PASHAYAN: We are the beneficiaries of the Westhaven Trust. Some of us are secretaries, office clerks, mechanics, welders, farmers, ginners, and managers. We as beneficiaries own an overage of 72 acres each. Before the Westhaven Trust, we could only dream of owning 72 acres of farm land in California, but now it's a dream come true for all of us. What was once owned by one farmer is now owned by 326 beneficiaries.

Congressman Pashayan, the Westhaven Trust has offered many of us the opportunity to own farm land, had it been otherwise, many of us would in no way be able to buy farm land in California. The Westhaven Trust has given us a sense of financial security for the present and the future. We now have the opportunity to give our children a good education, buy a home, invest in our future, we certainly are in the land of opportunity.

We as employees of the Boswell Company were made beneficiaries by the owners, the Boswell family, for nothing in return. This is how the Boswell family has shown their appreciation for their employees.

Congressman Pashayan, the Boswell Family could have sold their land to close friends, wealthy farmers or investors. All of whom, had they purchased the land, are already financially wealthy and enjoy many things in life that the average person cannot enjoy. If the Westhaven Trust is dissolved, the ownership will go back to the financially wealthy, where it has always been.

Congressman Pashayan, the Westhaven Trust meets the spirit and the intents of the law. We the beneficiaries of the Westhaven Trust are asking you to oppose S. 2659.

Sincerely,

Margarita S. Mora; Rick Mallory; Tom Robertson; Jimmy L. Turpin; David Keel; Albino Lopez; Kathie Lyons; Kevin Lehar; Daniel Maldonado; Bill Menke; Vernon Mullins; Patrick McKenna; David Andrada; Danny Brewer; Brett Hogue; John Orsaba; Don Hatfield.

Mr. PASHAYAN. With your permission, Mr. Chairman, I am just going to read one part of my statement. It is a very short paragraph and let me suggest an approach that I really encourage you and would love to talk to you about sometime in a different place.

There really is a simple solution to the problem that I think you are attempting to solve. And that is that Congress should make it clear once and for all that no one person should be able to share in the profit and loss from more than a total of 960 acres served by Federal project water.

I think that—I do not want to put words in your mouth, Mr. Chairman, but I logically think that is what you are attempting to get at. The test is a very easy test. The only thing we have got to

make sure of is that the Department of the Interior has the tools to enforce it. The tools I am talking about are the same kind that the Internal Revenue Service now has to determine such factors as income and deductions.

If we can employ that kind of an administration to this body of law, I think you will succeed in making sure that no one person receives the benefits greater than 960 acres, because, once again, Mr. Chairman, the law has always sent the benefit to the recipient. If you are going to change that, then send rather the benefit to the land, per se, that is really a radical change. And I just took from your opening remarks that your interest was not in a revolutionary change, I should say.

There is always more to be said, Mr. Chairman, I know you are attempting a herculean task here. And I appreciate this opportunity.

[The prepared statement of Mr. Pashayan follows:]

PREPARED STATEMENT OF HON. CHARLES PASHAYAN, JR., U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman, I appreciate this opportunity to visit with this Subcommittee to participate in a discussion on what the intent of the Reclamation Reform Act of 1982 may or may not have included. I am most cognizant of the time constraints and that this hearing is limited to S. 2659 and Title XVI of H.R. 2567 as passed by the House of Representatives.

The interest in these efforts to reform the Reclamation Reform Act are based on a General Accounting Office report where, for the first time ever, the concept of "congressional expectations" is introduced. So that we know the playing field we are on, I subscribe to the definition of "congressional expectations" as defined by Senator James McClure who sits on this Subcommittee: there are 535 expectations: yours, mine, and theirs.

Mr. Chairman, this GAO report was made available to me and others in Congress just days before November 5, 1989, the broadcast of the television fantasy program "60 Minutes." It perhaps addresses "your" expectations, but it does not address "my" expectations. The GAO does note, but does not emphasize, that the owners and lessees of the land were "in general compliance with the Act's 960-acre limit." Further, the report recognizes that ". . .the 1982 Act does not preclude multiple land holdings to individually comply for federally subsidized water . . ." having a common farm manager or custom farmers.

But the most compeliing statement in the report is at page 17. It says, in part, ". . . the Commissioner decided to base the Bureau's [Bureau of Reclamation] implementing regulations on the law as written rather than on Congressional expections reflected in the Act's legislative history, and the regulations permit multiple landholdings of not over 960-acres to receive federally subsidized water even if they are being operated collectively as one farm." It is gratifying to me to know that the Executive branch of the Federal government will write regulations reflecting the law, the whole law, and only the law.

The GAO recommended to the Congress amendments to Sections 202, 203, 205, 214, and 228 of the Reclamation Reform Act of 1982 by inserting the term "farm or farm operations" into those sections.

By doing so, the GAO, without the benefit of a public hearing or consultation outside the Federal government, has determined that the flow of water to a specific landholding can better be controlled and the Congressional expectations shall be met. They did not seek to quantify the harm those amendments would inflict, nor anticipate the wounds that would be reopened. In my view, GAO did a great disservice to irrigated agriculture, and its report is seriously flawed.

Let me put the results of this kind of legislation in a different light, one that we all might appreciate.

For example, a family that began farming on California's west side in the mid-1950s, initially starting with small leaseholdings and gradually acquiring more acreage as the farming operation grew. Prior to 1972, they irrigated the farm exclusively with pumped well water. When Central Valley Project water became available, they placed the land owned in excess of the parents 320-acre entitlement under re-

cordable contract. Eventually, the parents transferred the interest in the farming operation to their four adult sons.

The four adult sons brought three adult cousins into the family farming operation. These seven adults held the land as a family corporation until forming a trust in 1987 to comply with the Reclamation Reform Act of 1982.

This multi-district farm family trust now includes the four adult brothers and eight adult cousins. The trust owns 3,570 acres and leases 7,275 acres with 6,620 acres situated in Westlands Water District. All 12 beneficiaries of this family trust hold an equal 8.33 percent interest in the entity, a landholding attribution of 904 acres each, and jointly make the farming decisions.

Currently, the trust operates the land for the benefit of the 12 adult beneficiaries. The trust pays an operations and management fee to a family corporation made up of the four brothers and three of the cousins. The corporation actually provided the farming services, equipment, and labor for the trust. However, all farming decisions are made by the 12 family members.

S. 2659 would destroy the trust arrangement in this example. The family trust, even though it has 12 adult beneficiaries, would be eligible to receive water on only 960 acres. Any owned acreage over 960 acres would become excess and ineligible for water and any leased land over 960 acres would be subject to full cost, thus depriving 11 of their entitlement under the law.

The trust also utilizes the services of a farm operator, a company composed of eight of the trust beneficiaries. Those eight are paid a flat fee, a decision made by the 12 family members, to provide labor, equipment, and supervisorial services to the trust. Yet, under the legislation under review, this kind of family farm arrangement would expire. Instead of one efficient farming operation, in which each beneficiary receives no more than his or her entitlement, this trust may be forced to separate into 12 different entities, or remain together and pay full cost of water on leased land and used pumped groundwater on owned land that becomes ineligible.

Another example is even richer in history and is fully illustrative of the settling of the West. This family entity began in the 1920s with a husband and wife. The family matriarch is now in her 90s and began the farm with her late husband when she was in her 20s. The farm is made up of five entities: her landholding, her adult daughter's landholding, and three minor children's landholdings (the matriarch's grandchildren). One farm manager oversees the farming operations for the five entities, for a total acreage of 5,280 acres.

The family also owns and operates a packing shed and shipping company. These facilities are used by the family to get their produce to market.

Each of these five landholders has elected to be subject to the discretionary provisions of the Reclamation Reform Act of 1982. About 4,320 acres are subject to class one equivalency, with only 62 acres (52 acres for one entity, 10 acres for another) exceeding the statutory entitlement. The two entities pay full cost on those 62 acres.

The farm manager is the father of the three minor children, husband of the adult daughter, and son-in-law of the matriarch. He is paid a management fee by each of the five entities. He also provides the labor and equipment for the various farms.

S. 2659 would effectively eliminate the three minor children's eligibility to receive water on their landholdings, despite their nondependent status. Because the legislation includes "minor children" in the definition of an "individual," should the minor children's trust remain, those landholdings would be attributed to their parents as excess land and become ineligible.

The farm manager could continue to manage his wife's landholdings of 1,050 acres. With equivalency, this landholding exceeds the legal entitlement, so full cost would continue to be paid for 10 acres.

However, the farm manager could not also manage his widowed mother-in-law's holding. If he were to be paid to manage her farm, her landholding and that of his wife would be combined for eligibility and pricing purposes. Under S. 2659 or H.R. 2567, this matriarch, farming since the 1920s, may be forced to hire an outsider to manager her farm because her own family members would be prohibited from doing so.

Additionally, because the family operates its own packing shed and shipping business, the acreage is likely to be combined anyway. Because of the vague definition presented in S. 2659, the packing shed, the shipping company, the farm manager, and even the landholders could be construed one operator "at any given point in time." And if S. 2659 passes as is, it could prohibit the family from packing and shipping other farmers produce because all acreage could be combined for pricing purposes.

This aspect of the legislation impacts both the farmers in the Friant unit of the Central Valley Project, where farm size averages about 75 acres, and Westlands, and just about any water or irrigation district in the 17 Western States.

Yet another example, Mr. Chairman, is in the case of two brothers who each farm a combination of owned and leased land of 960 acres. These are two separate and independent farms. There is no sharing or profit or loss between them.

To help to control farming costs, the two brothers formed a partnership that owns the large pieces of equipment, such as tractors and harvesters. This partnership leases the equipment to the two farms on an as needed basis. This way, the two brothers do not have to buy two tractors or two harvesters every time they need to replace some of their equipment. The brothers share equipment through their partnership. Their farms, however, remain separate, independent entities.

In this case, if the Congress changes the rule by adopting further amendments to the Reclamation Reform Act of 1982, these two brothers, who farm separately with no sharing of profit or loss, would have all their acreage combined together for water pricing and eligibility purposes. They would be penalized by having to pay full cost simply because they share a tractor.

This kind of family farm, the sharing of equipment, is commonplace for many family farms whether they are in a Reclamation state or not. The economics of farming today simply do not allow individuals the luxury of purchasing expensive, sometimes specialized equipment, whenever they need it. The ability to share equipment, while operating totally separate farms, is one way to make farming more feasible for families. The legislative "fix," in this case, would simply and surely eliminate this customary practice and jeopardize many family operations.

Yet another example I should like to relate involves three adult brothers who have been farming on their own since 1979. Their parents had farmed prior to that, and after the death of their father, his landholdings were put in a trust for his widow. The three brothers and their mother divided their legal entitlement of 960 acres into three partnerships, in which each individual has a 25 percent interest. Together, the four adults own 1,588 acres, which is leased by the three partnerships. The partnerships also lease an additional 1,844 acres from other individuals. The total acreage for the three partnerships is 3,432 acres. Each partner, then, has an attribution of 858 acres and is within his or her legal entitlement.

The three farms are operated separately; the profit or loss of one entity does not affect the profit or loss of the others.

To manage the farms efficiently, the brothers contribute their services to the farms, based on their areas of "expertise." One brother is responsible for crop selection and production. Another brother is responsible for purchasing, repairing, and managing all of the equipment. The third brother is responsible for managing the business aspects of the farms. Each contributes these services to the three farm operations.

Should the legislation amending the Reclamation Reform Act of 1982 be passed, the three partnerships will be combined for the purposes of eligibility and water pricing. The entire 3,432 acres would be considered one farm, of which only 960 acres would be eligible to receive water.

Additionally, because the three brothers contribute their services to the three farms, any one of them could be considered an operator at any particular time. This, too, would cause the lands to be combined for eligibility and pricing purposes.

This kind of cooperative sharing also is widespread in farming. It is not unique to irrigated agriculture, nor is it unique to Western agriculture. Like my previous examples, these three brothers are able to spread their costs over more land to farm more efficiently. Yet, each brother and the mother does not exceed their entitlement of 960 acres. The legislation would accomplish one thing, and one thing only: the total disruption of a legal and efficient family farm.

Another most troublesome issue presented by these legislative "fixes" is the financing arrangement required of all farmers. If my earlier examples served to illustrate the disruptions of unique family operations, perhaps others will illustrate the problems presented by financing the day-to-day operation of a farm.

For example, consider a father and son who each own and farm 960 acres as completely separate operations. Due to the realities of farming, the lender requires that the father co-sign or guarantee the son's crop financing. The son leases separate equipment from a third party on his farm operation. Under the legislation you are considering, the son would be required to obtain his own financing or be denied the opportunity to enter farming because the father and son would be considered a single "farm" and full cost would have to be paid for water received on the son's entire 960 acres. This would be true even though neither the father nor the son received benefits from the use of water on more than 960 acres.

Another example is two brothers who each own 960 acres and operate separately. Because of the high cost of purchasing farm equipment, one brother leases the equipment from his brother as needed. Under the proposed amendments, both farms, even though separately financed and operated, would be considered a single farm eligible to receive water for 960 acres only. Thus, because one brother leases equipment from another, he loses eligibility for water on 960 acres.

One last example, Mr. Chairman, and I should like to isolate it somewhat because it involves two brothers who do not farm in Westlands, they farm in the Delano-Earlimart Irrigation District, which is a division of the Friant Unit on the Central Valley Project. These two brothers own 100 acres, but lease an additional 990 acres through three separate entities. Although each has an attributable acreage total of 545 acres, they choose to operate as a family unit, one reason being capital, and, secondly, because they do custom farming work. That business, pest control, is done for 47 different growers owning and leasing 12,000 acres.

Under the legislation being considered, the partnerships would be merged, although each has no more than 545 acres. This would immediately subject these two brothers to the full cost water pricing provisions on a portion of their jointly leased acreage, and increase their annual water cost by $8,000. The only alternative for these two brothers would be to cease operating as a family operation and try to exist and farm separately.

An additional problem is presented in the form of the custom farming business. As a pest control business, the brothers are hired on a time and material basis and share no economic risk in their customer's farms or crops. However, the legislation you are considering might ensnare them by defining them as a "farm operator." If so, then the end result of this legislative initiative would be to terminate an innocent business venture by two brothers. This is truly a heroic decision by the Congress.

Mr. Chairman, S. 2659 holds the same pitfalls as Title XVI of the House-passed H.R. 2567. Simply put, these legislative initiatives would invalidate too many legitimate existing farming operations, undue loan and security arrangements, prohibit traditional "family" cooperation, and force cooperatives and other legitimate farming endeavors to evaluate unnecessarily their relationships and services. The amendments are but a siege on traditional Western agriculture.

I feel most strongly that the GAO is wrong in its basic premise that the Congress expected more than what is offered in current regulation and law, and I do not agree that the Congress should again spend time on seeking to define a "farm" or "farm operation. To me that is an exercise in futility, and is an issue that even the Committees on Agriculture cannot resolve.

The "common farm," "joint operation," or "decision making" tests presently being proposed will only lead to confusion, uncertainty, traps for the unwary, and further tinkering by Congress.

As one of those who went through the drafting of the Reclamation Reform Act of 1982, I disagree with the GAO report and its novel test called "expectations of Congress." The 1982 Act was a compromise involving the same concepts that we are considering today.

The first attempt at reform was in the Senate in 1979. It voted an absolute farm size of two sections, and rejected the full-cost concept, either for owned or leased land above 1280 acres. The House then spent almost three years trying to define a farm, a farmer, or some other means limiting farm size. Every proposal proved unworkable.

The final compromise allowed 960 acres of non-full-cost water to be owned or leased by a "qualified recipient." A "qualified recipient" is an individual who was a citizen of the United States, a resident alien of the United States, or any legal entity established under State or Federal law benefiting 25 natural persons or less.

The law sent the benefit to the person, not the acres. It was the value or size of the benefit that the law defined in terms of acres. The non-full-cost and ownership entitlement could be in one ownership or through multiple ownerships.

A "limited recipient" was simply a legal entity that benefits more than 25 natural persons. A "limited recipient" was allowed to own only 640 acres but all at full cost of water.

And finally, a "limited recipient" or a "qualified recipient" had to pay full cost for any water received in excess of the ownership limitations, on land he leased.

The law provided for two classes of full cost. "Qualified recipients" had to pay no less than 7½% interest or the interest rate charged when the expenditures were made.

"Limited recipients" had to pay a higher interest rate, based on the rates in 1982, which is basically 12% interest.

This, then, was the compromise by which Congress abandoned all but the impossible task of defining a farm, a farmer, or other appropriate recipient of non-full-cost water.

If we change any elements of this compromise now, the balance collapses, and the whole scheme should be renegotiated, out of fairness to us who bargained in good faith and left much, we felt, on the table.

Mr. Chairman, there is a very simple solution to this problem. Congress should make clear once and for all that no one should be able to share in the profit and loss from more than a total of 960 acres served by Federal project water. It is a simple test. It is easily defined. We need only to ensure that the Department of Interior has the tools to enforce it. The tools should be the same as the Internal Revenue Service has to determine income and deductions.

Irrigated agriculture is not avoiding its lawful responsibilities, it is only seeking a level playing field it thought evolved from the Reclamation Reform Act of 1982. In California, Mr. Chairman, we felt we helped level that field with the development of and signing of the Coordinated Operations Agreement. I fear that they are beginning to feel otherwise at this point in time.

Mr. Chairman, please listen to these concerns.

Thank you.

Senator BRADLEY. Thank you very much, Congressman Pashayan.

Congressman Herger.

## STATEMENT OF HON. WALLY HERGER, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HERGER. Thank you, Mr. Chairman. I appreciate the opportunity to testify before you about S. 2659 and 2567. I would request that my full statement be included in the record.

Senator BRADLEY. Your full statement will be included in the record.

Mr. HERGER. This legislation includes major changes in reclamation law which will have a devastating impact on many family farmers whom I represent in the Sacramento Valley of Northern California.

I am very concerned about the provisions in S. 2659, which would change how the 960 acre limitation is determined in reclamation law. This broadening of current policy would greatly impact a great number of the family farms in my congressional district by requiring them to pay up to six times more for reclamation water than has historically been the case.

I want to emphasize that it will be economically impossible for most of these farmers to continue producing crops if they are not able to obtain an affordable supply of water.

The vast majority of our rice farmers in Northern California, which is the second largest rice-producing district in the Nation, cannot practically shift to the production of alternative crops because the unique clay soils will not support them. Thus, it is likely that many of these rice producers who currently receive reclamation water could be forced out of business if this legislation is passed.

Mr. Chairman, you will hear testimony today which will specifically outline how the proposed changes in S. 2659 would adversely impact farmers throughout the West. I urge you and the members of your panel to carefully consider these concerns before moving forward.

I also would like to comment with regard to the Gejdenson amendment to H.R. 2567, which would in practical terms prevent

farmers who participate in USDA farm programs from obtaining reclamation water.

I would like to emphatically point out that this legislation would impact those family farmer who are already operating their farms at the margin and therefore would least be able to afford losing their farm program benefits.

I am strongly opposed to this legislation, because I feel that the arguments advanced in favor of it rest to a great degree upon what I feel is the false impression that our farm and water policies are at odds. This I believe has never been—is not now—the case. These programs have essentially the same objective: to build and preserve a strong social and economic base in rural America.

In my view, the Gejdenson amendment directly contradicts the Federal goal of assisting family farmers in competing in today's distorted agricultural markets in the world, and I strongly urge you to reject this legislation.

Again, I thank you for your time.

[The prepared statement of Mr. Herger follows:]

PREPARED STATEMENT OF HON. WALLY HERGER, U.S. REPRESENTATIVE FROM CALIFORNIA

Thank you, Mr. Chairman, for the opportunity to testify today regarding S. 2659 and H.R. 2567. This legislation contains drastic changes in Reclamation Law which will have a devastating impact on many family farmers whom I represent in the Sacramento Valley of northern California.

I am very concerned about the provisions in S. 2659 which would change how the 960 acre limitation is determined in Reclamation law. This apparently is intended to shift the focus of Reclamation law from those who derive benefits from the projects, based on the production of crops, to those who only contribute some type of supervisory work to a farm, but have no direct interest in the value of Reclamation water. For instance, this change would result in all of the land which produces crops for a particular seed or food company on a contract basis to come under the 960 acre limitation, no matter how many small farmers comprised this "operation". This broadening of current policy would greatly impact a great number of the family farms in my congressional district by requiring them to pay up to six times more for Reclamation water than has historically been the case.

Mr. Chairman, I want to emphasize at this point that it will be economically impossible for many farmers to continue producing crops if they are not able to obtain an inexpensive supply of water. I represent the second largest rice producing district in the nation. The vast majority of our rice farmers in northern California cannot practically shift to the production of alternative crops because the unique clay soils will not support them. Thus, it is likely that many rice producers who currently receive Reclamation water could realistically be faced with being forced out of business if this legislation were to become law.

Mr. Chairman, you will hear testimony today which will specifically outline how the proposed changes in S. 2659 would adversely impact many farmers throughout the west. I urge you and the members of this panel to carefully consider these concerns before moving forward with this legislation.

I also would like to comment with regard to the Gejdensen Amendment to H.R. 2567, which would, in practical terms, prevent farmers who participate in USDA farm programs from obtaining Reclamation water. This legislation also would adversely impact many farmers in my congressional district. I would like to emphatically point out that this legislation would impact those farmers who are already operating their farms at the margin and therefore would least be able to afford losing their farm program benefits.

I am strongly opposed to this legislation because I believe that the arguments advanced in favor of it rest heavily upon the false impression that our farm and water policies are at odds. This has never been, and is not now, the case, as these programs have essentially the same objective—to build and preserve a strong social and economic base in rural America. The confrontation which the Gejdensen Amendment sets up between USDA support programs and federal Reclamation activities

would undermine both programs and, in my view, would not be in the best interests of the American people.

Since 1902 and as late as 1987 Congress has established and affirmed the policy that it is in our national interest to invest in the development of water resources through the construction and operation of Reclamation facilities. The general public benefits greatly from this policy through the existence of the most inexpensive and stable food and fiber supplies in the world.

While federal Reclamation investments have been successful in providing many types of benefits to rural communities, our farm policy has protected farmers from artificially low prices and unfair foreign trade practices by maintaining farm income and stabilizing commodity supplies. Federal farm policy shares the objective of maintaining a secure, domestically produced and affordable food supply, but is designed to achieve this goal independent of Reclamation policy.

Mr. Chairman, the family farms which would be impacted by the Gejdensen Amendment constitute a significant portion of the economic foundation of our local economy in the Sacramento Valley of northern California. As I mentioned before with regard to S. 2659, substantially increasing the cost of Reclamation water for our farmers will undoubtedly lower farm income below survival levels for hundreds of farmers, and likely will eventually cause many to abandon farming altogether.

The Gejdensen Amendment directly contradicts the federal goal of assisting family farmers in competing in today's distorted agricultural markets, and therefore would be detrimental to our efforts, which currently are going forward in the development of the 1990 Farm Bill, to craft policies which are responsive to the needs of our nation's farmers and consumers alike. I strongly urge you to reject this legislation.

Thank you, again, Mr. Chairman for considering my views on these important issues.

Senator BRADLEY. Thank you very much, Congressman. I will let you both go. We have a lot of witnesses.

But I would like to, if I could, just pick up on a few things you said, Congressman Pashayan. You said that it should go to recipients as opposed to land. I think that was your statement.

As you know, under the Reclamation Reform Act there is a distinction between limited recipients and qualified recipients.

Mr. PASHAYAN. That is true.

Senator BRADLEY. Limited recipients being entitles of 25 or more people, and a qualified recipient being smaller, and so could you tell me which of those you had in mind?

Mr. PASHAYAN. Mr. Chairman, while I had primarily the qualified recipients in mind, I really had both in mind, because the limited recipient was to prevent large corporations—you see, in other words that was a way to capture and to prevent that kind of water going to large corporations.

What is a large corporation? Where the entity is owned by more than 25 people. That was the idea here. The point I simply was trying to make is that, let us say you own 10,000 acres of land, just to pick a figure. You have the right to have Federal water at the low cost, or however you want to define it, on 960 of those acres, whichever 960 you choose.

All we are saying is that if you and I want to form a partnership where I own my 960 acres, as long as that partnership is at arm's length, and that the numbers reflect an arm's length transaction, there was never any attempt—because it was impossible to say who was a farmer and who was a manager and all those definitional—there was never an attempt to prevent us from working together if that is what we chose to do, as long as I did not receive benefits of the water on more than 960 acres.

Senator BRADLEY. From your perspective, the purpose of the distinction, would you say, is that the larger subsidy should go to the

smaller farmer. Do you think that was the purpose of the distinction?

Mr. PASHAYAN. I would have to say no. I would have to say the purpose was to prevent General Motors from coming in, you see.

Senator BRADLEY. That is it, from your perspective?

Mr. PASHAYAN. Yes.

Senator BRADLEY. Okay. Now, your suggestion was that you thought that it should be—what? Allocated on the basis of profit and loss?

Mr. PASHAYAN. Mr. Chairman, what I am simply suggesting is that—and it was a general concept that I think what we are trying to do is to say that we have a benefit that is going to go to somebody. The size of that benefit we express in terms of acres, so that benefit, that is the quantity of the benefit. It is not going to go to more than 960 acres.

What does that mean? That means that if I own my 960 acres, and I am managing my 960 acres and Mr. Herger decides to have me manage—and it would be an awful decision on his part, I assure you—decides to have me manage his 960 acres, that means that the amount of money I get paid for managing his 960 acres must be that amount of money exclusive of any money representing the fact that he is getting less than full-cost water that I am using in the management. That is what I am trying to say.

Senator BRADLEY. So you are saying that there are really actual profit and losses which determine subsidy?

Mr. PASHAYAN. What I am trying to say is that you can determine—let me just say this. Suppose that it is a fair market value that somebody has paid $50,000 a year to manage somebody else's farm, all right? Let us suppose—the 960 acres.

So let us suppose Mr. Herger hires me not for $50,000 to manage his farm. Let us suppose he hires me for $75,000. Then we go and we take a look and we say, well, where is that other $25,000 coming from? It is really coming from the water. So he is paying me not just——

Senator BRADLEY. The $25,000?

Mr. PASHAYAN. If the fair market value for managing the land is $50,000, let us say—the fee, the salary—but he is paying me $75,000, I mean way beyond what the fair market value is, then we can deduce that that $25,000, that my interest in the land is more than just a managerial interest. I am in effect getting a property interest. I am getting some of his subsidy. That is what I am trying to say.

Senator BRADLEY. Congressman, maybe I am a little dense. Do you think you could put this on paper so the subcommittee could have it for its consideration? That would be very helpful, particularly this idea of profit and loss. I did not quite understand it, and it would be helpful for the committee. I do not want to take further time on that question, if that is okay with you, but we will be awaiting some input.

Mr. PASHAYAN. I will be glad to, and I appreciate the Senator's interest.

Let me just indulge the Senator, if I may—the Chairman, just for 30 seconds here. There are a lot of very small farms in California—by which I mean 10, 20, 50, 60, 70 acres—that are also in opposition

to the language as it now exists, and if this were so crushing on small farms, then why are they as much in opposition as some of the larger farms?

Senator BRADLEY. I think that is an interesting question, and I am sure that we will get an answer before the day is over.

Let me just, if I can, focus a little on the Central Valley. There are a lot of farmers in the State water project who pay prices for water that are close to full cost, is that not correct?

Mr. PASHAYAN. Well, for the purpose of your question, I will accept that as a premise.

Senator BRADLEY. They grow the same crops, really, as many of those who receive Bureau water, right?

Mr. PASHAYAN. There are some times when they do, yes.

Senator BRADLEY. They compete in the same markets, right?

Mr. PASHAYAN. If it is the same crop.

Senator BRADLEY. So the question really is, in your statement you said that such a change would disrupt agriculture in the Central Valley if farms of more than 960 acres had to pay full cost for their water. Now, would that disrupt agriculture if the competition——

Mr. PASHAYAN. Well, Mr. Chairman, with all due respect, I think that is a little bit of a comparison of apples and oranges, because how much—the formula is still ability to pay, and certainly the Government has an interest in getting that amount of water for its water. The cost of the State project I am sure has a different basis from the cost of the Federal project.

As well, you have to understand that some of those farmers using the State service water are also mining the water from underground, so they mix the two together. Some of them share in the Federal water. There are exchanges. It is a much more complicated phenomenon than just what you are suggesting.

It is one thing to say how much will the low cost be, or the subsidy—whichever words you want to use. It something else to say, on how many acres can you use it? It is one thing to say, can you and I farm together in an arm's length relationship that does not transfer the subsidy from me to you, or from you to me. That is one thing. It is something else to say, just how high should the cost of the water be?

Senator BRADLEY. Senator McClure, do you have any questions?

Senator MCCLURE. Mr. Chairman, if I recall correctly you asked that a letter addressed to you by shareholders in the Westhaven Trust be made a part of the record as a part of your testimony.

Mr. PASHAYAN. Yes, I did.

Senator MCCLURE. I will place in the record a letter from the Security Pacific National Bank.

[The letter referred to follows:]

SECURITY PACIFIC NATIONAL BANK,
FINANCIAL MANAGEMENT & TRUST SERVICES,
*Los Angeles, CA, July 27, 1990.*

Hon. BILL BRADLEY,
*Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, Washington, DC.*

Re: S. 2659

DEAR SENATOR BRADLEY: Security Pacific National Bank, a national banking association, is the trustee of the Westhaven Trust under a trust agreement dated May 25, 1989. The beneficiaries of the Trust are 326 individuals, each of whom has a beneficial ownership interest in the Westhaven Ranch. The Westhaven Ranch is a farm of approximately 23,238 acres located in the Westlands Water District in California.

The Subcommittee on Water & Power of the Senate Committee on Energy and Natural Resources is presently considering Senate Bill 2659, which would amend the Reclamation Reform Act of 1982. The Senate bill, if enacted in its present form, would have a devastating effect upon the 326 beneficial owners of the Westhaven Ranch. Because the Trust has been cited by some as an example of the alleged abuses of reclamation law, we appreciate the opportunity, on behalf of the beneficial owners, to briefly explain how the Trust is owned and operated.

The trustee purchased the Westhaven Ranch on behalf of the beneficial owners in 1989. It was able to borrow funds for the purchase by using the land and growing crops as security. The trustee is responsible for the management and operation of the Westhaven Ranch. As in all aspects of the Trust, the trustee has a fiduciary obligation to exercise its powers in the best interests of the 326 beneficial owners.

The sale to the Trust is a completed arm's length transaction. Boston Ranch Company and J.G. Boswell Company retained no direct or indirect control of the Westhaven Ranch.

### 1. THE TRUST CANNOT BE REVOKED OR AMENDED

The Trust is irrevocable. It is an independent, fiduciary trust. While the Boston Ranch Company created the Trust and is therefore the Trustor, neither the Boston Ranch Company nor the J.G. Boswell Company has any legal right, directly or indirectly, to regain title to any of the Westhaven Ranch or any of the Trust assets. The Trust cannot be revoked, amended or cancelled by either the Boston Ranch Company or J.G. Boswell Company.

The Boston Ranch Company and the J.G. Boswell Company retained no power to change the beneficiaries or their individual interests by terminating employment, changing salaries, or otherwise.

### 2. THE TRUST IS INDEPENDENT

California law imposes upon a fiduciary the duty to administer a trust in the best interests of the beneficiaries. If the trustee mismanages the trust property, California law provides remedies to recover profits or recoup losses resulting from the trustee's breach of trust. The trustee of the Westhaven Trust is, in fact and under law, independent of the Boston Ranch Company and J.G. Boswell Company. The independence required of the trustee and the fiduciary duty imposed on the trustee by California law assure that the beneficiaries' ownership interests are fully protected.

### 3. THE TRUSTEE INDEPENDENTLY MANAGES THE TRUST

The trustee is vested with the sole power to manage the Westhaven Ranch, including the power to hire farm managers, select the crops to be grown, and otherwise make the decisions involved in operating the trust property. The Trust selected Boston Ranch Company as manager for the first year of its operation under a one year management contract that can be terminated by either party on 30 days notice. Under this contract, Boston Ranch Company receives a management fee which is not related in any way to the profit or loss of the Westhaven Ranch. The trustee entered into this agreement after surveying other management companies, reviewing management fees charged for comparable services, determining that Boston Ranch Company was well qualified to perform these services and concluding that the fees charged by Boston Ranch Company were competitive. The trustee will make this same evaluation on a periodic basis.

The trustee is free to select any manager it chooses. Should the trustee determine that it would be in the beneficial owners' best interests to hire a different farm manager, it would be obligated to do so. The trustee demonstrated its independence earlier this year when it decided that certain acreage of the Westhaven Ranch would be more profitable growing tomatoes, a crop not ordinarily farmed by the Boston Ranch Company.

The trustee is also responsible for obtaining the necessary financing to support the farming operation and to handle all financing related matters during the term of the loan. However, the financing is secured only by the assets of the Trust, basically the land and the crops.

4. BENEFICIARIES RECEIVE ALL OF THE PROFITS AND OTHER OWNERSHIP BENEFITS

The 326 beneficial owners are entitled to the annual net income earned by the Trust and to any proceeds after expenses upon a future sale of the Westhaven Ranch, all in accordance with the terms of the Trust.

It should be noted that most of the 326 beneficial owners are persons of moderate financial means who work either on the Westhaven Ranch or who work on other farms in the San Joaquin Valley. The beneficial owners include field foremen, welders, tractor drivers, cooks, irrigators, secretaries and engineers—the actual working force of the Westhaven Ranch and other ranches. We have been advised that the average yearly income of a beneficial owner is $34,000. We have been further advised by the farm manager that the average net income distribution for 1990 is presently estimated to be approximately $6,000. To the beneficial owners, receiving the benefits of the Trust has and will make a significant difference in their lives. It has provided the beneficial owners with an investment which allows them to plan for future financial needs, such as retirement or college for their children. It may also provide the beneficial owners with an opportunity to ultimately become a direct owner and operator of farmland.

The Trust has provided the beneficial owners with the opportunity to obtain substantial and irrevocable benefits, and their interests are protected by an accountable and independent trustee. Without the Trust, the individual beneficiaries could not have qualified for the overall financing necessary to purchase or operate the Westhaven Ranch. Only as beneficiaries could most of them ever hope to acquire the interest they now have in the Westhaven Ranch.

We believe that the Trust complies not only with the letter of reclamation law, about which there is no dispute, but also with the spirit of the law. The Trust allows 326 individuals, most of whom would not otherwise have the financial resources to purchase farmland, to be beneficial owners of farmland, with all the benefits and burdens attendant thereto. In dramatic contrast, prior to the establishment of the Trust, all of the benefits of ownership went to only one entity: J.G. Boswell Company.

5. S. 2659 WOULD DEVASTATE THE INTEREST OF THE BENEFICIARIES

Applying the proposals in S. 2659 to the Westhaven Trust would result in the following:

1. The trustee, a subsidiary of Security Pacific Corporation, which is owned by more than 25 persons, subjects all the property it holds in trust for any beneficiary to full cost project water and to disqualification for any protect water at any price for more than 640 acres.

2. The Westhaven Trust, which benefits 326 individuals, would be a limited recipient that could receive reclamation water at full cost on a maximum of 640 acres only if the trustee's entitlement was not used for other trusts.

3. With no project water, or only for 640 acres, the Trust would be forced to utilize well water for the remaining acreage. The Central Valley Project that currently supplies water to the Westhaven Ranch was created because the underground supply of water was diminishing and generally of bad quality.

4. Since the Trust owns more than the 640 acres which is allowed for a limited recipient, the balance of the Westhaven Ranch presumably would be excess land. It could be re-qualified for federal protect water only if sold with price approval at approximately the same price that the property was acquired. In the area where this property is located, there have been no recent sales of land that do not qualify for reclamation water because buyers simply cannot rely on the availability of groundwater.

5. If the Trust was required to dispose of the property at excess land values, it is questionable whether it could sell the property for enough money to satisfy the purchase money mortgage. This loan was based on the ability of lenders to be secured by the full value of the property reflecting the project benefit as provided by reclamation law to encourage financing of excess land sales.

6. After the mortgage was paid, there is little likelihood that anything would be left for the beneficial owners. Their interests, in effect, would be wiped out.

7. The Boston Ranch Company and the J.C. Boswell Company, since it has already received its purchase price, would be unaffected except for the ability to bid yearly on management contracts for the Westhaven Ranch.

It is hard to believe that these results could be intended by any act of Congress, particularly where the seller, the trustee and the beneficiaries relied on what everyone agrees was and is the law and an extremely thorough review and eventual approval by the Secretary of the Interior.

Even if the Trust was not forced to divest itself of the Westhaven Ranch and somehow could remain eligible for federal protect water at full cost, the economics of farming are such that the viability of the Trust would still be in great jeopardy. The profitability of row crop farming operations traditionally vary from near break even or even a loss to only a few hundred dollars of profits after debt service per acre per year. By increasing the water costs by as much as $75.00 to $150.00 per acre per year, if full cost is imposed, the Westhaven Trust could well lose money in many years, be unable to meet its' debt obligation, and lose its' property through foreclosure. Again, the beneficial owners would be left with nothing.

CONCLUSION

The proposed amendments to the reclamation law contained in S. 2659 would make it exceedingly difficult, if not impossible, to profitably farm the Westhaven Ranch, and would destroy 326 individuals' share of the American dream.

On behalf of the beneficiaries of the Westhaven Trust, we submit that the present law is adequate. It should not be amended with respect to either (1) the economic interest test which uses the simple profit and loss test to determine whether an individual has an interest in any acreage, or (2) the beneficiary's interest as the measure of a trust entitlement for ownership or pricing.

We, of course, are available to provide any further assistance or information which the subcommittee may desire to study regarding this very important problem.

Very truly yours,

ROBERT L. VAN KIRK,
*Senior Vice President.*

Mr. PASHAYAN. One again, let me emphasize that beneficiaries of the Federal water—it is not the Boswell Company. It is not the trustee, the bank, it is these 326 employees, they are the ones, and their average size ownership is less than 80 acres, and obviously none of them owns more than 960.

Senator BRADLEY. Senator Conrad.

Senator MCCLURE. Mr. Chairman, if I could just make one comment, we will have a lot of opportunity to discuss this later, but while the Congressman is here, I wanted to attempt to state something that I think he was trying to say, and I know it is what I have in my mind, and see whether the Congressman agrees or disagrees.

What we did when we passed the law was tried to distinguish, rather than looking at ownership or the legal framework in which they operated, who really gets the benefit of the water.

Mr. PASHAYAN. Correct.

Senator MCCLURE. Now, you could say that the farm worker who works on the farm gets the benefit of the water. You could say—hypothesize that the equipment dealer in town who sells the equipment gets the benefit of the project. That is not what we are talking about.

What we are talking about is where—except for those general benefits that are payable to everybody equally and precisely the same, according to the amount of capital, the equipment they sold, the labor they provided, for which they are entitled to a going wage, a going return in the marketplace, anything above that is distinguished as the benefit which the owner gets.

We tried to define this limitation in terms of the 960 acre limitation, the benefits of the irrigation water on those 960 acres have to flow through to an identified, qualified recipient. If it meets that test, however you do it—whether you lease the land, whether you had a farm management contract, the test was who received the benefits of the irrigation water.

Mr. PASHAYAN. Suppose you are a very senior citizen and you find it impossible to farm the land yourself. You are too old. It is desirable to be able to go out and to hire a professional manager to manage the land for you, even though he might be managing two or three other 960 acre plots, because that is the business he is in.

There is nothing wrong with that, as long as the amount that that senior citizen is paying the manager is strictly an amount equal to strictly salary, a fee or whatever you want to say—wages—and does not represent more than that, because if it represents more than that, then that introduces the argument that that additional amount of money is not salary, but it is the benefit that the land owner is conferring onto the land manager. That is what you have to guard against, and we are all in favor of preventing that kind of thing from happening.

Senator MCCLURE. Congressman, I might add to it, and I agree with the explanation you just made. If the management fee were exactly the same on 960 acres that has reclamation water or 960 acres that does not, that meets the arm's length test, and if somehow the remuneration were greater on the land that received the reclamation water than it was on the land that did not have the reclamation water, it would call that transaction into question as to eligibility under the act.

Mr. PASHAYAN. That is correct.

Senator BRADLEY. Senator Conrad?

Senator CONRAD. I would just be very brief, Mr. Chairman. I have to preside at 4 p.m.

But you asked a question about being disruptive to irrigation or farming practices in the Valley, and I think that is an important question, because I think the goal that you seek to achieve is a worthy goal, one that I certainly agree with. I think that inadvertently we may have language here that would cause a problem, and let me just cite an example and get the Congressman's reaction.

If we had four families—let us say three brothers and a father. They each owned, independently, 900 acres. They each received Bureau water.

Now, with the language that is in the proposal before us, as I understand it, they could find themselves in a situation, if they operated that land together, which is also not unusual—for example, if they had one combine and they harvested all of those ares, the 3,600 acres together, if they made common management decisions, if one person did the marketing and one care took weed eradication, all of a sudden they would find themselves in a situation in which only 960 of the acres qualified for Bureau water.

The other remaining acres would be required to pay full cost, and you would devastate the economic viability of that operation. Is that not a potential problem, given this language?

Mr. PASHAYAN. I think the Senator is entirely correct, and not only is he entirely correct in the example he gave, it could also force another, I should think unhappy, result. Namely, it could force them to make a decision, an economic decision, that they are going to stop farming together and they are each going to have their own entity.

So you will not have that family unity, that sense of growing up on the farm together, and that sort of thing, and you will have four

separate operations arbitrarily cut off. The father could never borrow the son's tractor. One son could never loan his brother something.

I mean, Mr. Chairman, if we are talking about family operations, really, that kind of every-day blood, sweat, toil and tears kind of activity is the sort of thing I should hope that this committee would encourage and not discourage, and I think it is an inadvertent result, I am sure, that it would have that discouraging effect.

So I agree with the Senator, but I would take it even farther.

Senator BRADLEY. Thank you very much, Senator Conrad. Let me just note that that is one of the reasons we exclude the exchange of equipment in the bill, so you do not have that situation.

Mr. PASHAYAN. I understand that.

Senator BRADLEY. I have one final question, just so I can know the frame of reference, because this is a big and complicated subject and we are really trying to understand it here.

From your perspective, there is really no limit on the number of people who could operate farms together. Is that correct?

Mr. PASHAYAN. Mr. Chairman, that is a very interesting question. I think the same reality that dictates in favor of the sort of flexibility that I am testifying in favor of today also dictates that somewhere up there where the thing becomes so cumbersome that nobody is going to do it.

Senator BRADLEY. What would that be, from your perspective?

Mr. PASHAYAN. I do not know, but I do know that, for example in the Westlands Water District, which is the water district we have all been talking about here, when it comes to the larger ones——

Senator BRADLEY. You are saying it is not 25,000 or 23,000. So what is it?

Mr. PASHAYAN. Mr. Chairman, it is hard to say what the upper limit is, but all I am saying is that somewhere out there the thing is going to become cumbersome, and I really do not think you have to worry about a 600,000-acre farm, or a number of farms working together.

Senator BRADLEY. You are saying somewhere short of the whole Central Valley?

Mr. PASHAYAN. Yes, I think somewhere considerably short of the whole Central Valley.

Senator BRADLEY. Your view is that this farm should receive subsidized water, no matter what the size?

Mr. PASHAYAN. Well now, Mr. Chairman, I am not saying that, because I mean that is—that question has truthfully different meanings. I do not know what you mean by "farm." If you own 960 acres, Senator McClure owns 960 acres, if I own 960 acres——

Senator BRADLEY. Operating farms together, is there any limit? That is the question.

Mr. PASHAYAN. Yes, Mr. Chairman, there is, and it is dictated by the law of economics. I cannot give you a number.

Senator BRADLEY. That is a fair enough answer. It is not as clear as I would like, but it is a fair enough answer.

Let me thank both of you very much for your testimony.

Mr. PASHAYAN. I thank the Chairman for holding a hearing on this, because it is enormously complicated. As you know, on the House side we did not have this process. Thank you.

Senator BRADLEY. I will insert in the record at this point a statement from Congressman Gary Condit.

[The prepared statement of Mr. Condit follows:]

PREPARED STATEMENT OF HON. GARY A. CONDIT, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman, I appreciate the opportunity to appear before you today to point out some of my concerns regarding H.R. 2567 and S. 2659. Before I do so, however, I would first like to thank the Chairman for holding this hearing. I am pleased to see that the Senate, unlike the House, has chosen to conduct hearings before embarking on making significant changes to a very complex area of the law.

The proposals before you represent a major reversal of the basic principles Congress agreed to in the Reclamation Reform Act of 1982 when it exhaustively revisited and reviewed the law and reconciled the competing positions concerning its provisions. H.R. 2567 and S. 2659 change the basic foundation of that law, specifically the 960 acre entitlement for each qualified individual or family. These bills create a whole new concept of acreage limitation which goes far beyond what the drafters of the 1982 Act envisioned by placing the limitation upon a "farm" or "operation", rather than an "individual".

This change is tremendous in scope, and will be devastating to farmers throughout the 17 western states which are served by reclamation projects. Although well intended, this change is not "anti-farm conglomerate", it is anti-family farm. It would repeal the two basic tools which hundreds of families use and rely upon to keep the family farm together in a brutal farm economy—trusts and farm management arrangements.

Consider the real world impact of these changes on this family: There are in my district three brothers. Each farms a combination of owned and leased land of approximately 960 acres. These brothers have placed their property in trust as a management tool in order to more efficiently operate their farms. One brother is the ranch foreman, another runs the office, and another is in charge of the harvesting and sales of the crop. This allows sensible and economic farming by operating the separate landholdings as an integrated unit. It just makes more sense to divide up the farm tasks rather than the farm. No one brother, however, benefits from more than 960 acres without paying the full-cost rate, exactly as the law requires and the drafters intended.

I am also concerned about the impact these bills would have on many other farming operations which are quite common throughout the 17 western states. Both proposals would lump together as one "farm" or "operation" any number of separate farms which have common financing, whether through a lending institution or cooperative. They would also lump together as one farm all of those who utilize the services of the same packing house, harvesting operation or marketing company. To consider these separate, individual farms as one would go against the basic notion that a qualified individual or family is entitled to its own 960 acre entitlement of water on owned or leased land.

Of additional concern is the so called "double subsidy" provision contained in H.R. 2567. This provision singles out reclamation programs and ignores a multitude of other Federal subsidies and assistance programs available to farmers across the Nation. This provision is intended to punish Western farmers based upon the misconception that our water and farm programs are in conflict. This is simply not so, as the long-term goals of both programs are identical—a strong, durable farm sector and a healthy rural economy.

The USDA programs which Western farmers would be effectively prohibited from using under the bill are an effort by Congress to protect farmers from the wide fluctuations in national and international markets. By contrast, the reclamation program is a long-term program to permit the development of a more diverse agricultural base.

Forcing farmers to choose between paying full cost for water and USDA programs would have the impact of putting farmers out of business or encouraging farmers to increase the production of program crops or to shift their cropping patterns in order to cover costs. This proposal would do little to reduce Government subsidies, would put farmers in serious financial jeopardy, and would upset the agricultural marketplace and would undermine the public benefits of two important programs.

These proposals fail to account for the tremendous benefits of the reclamation projects. Since 1982, there has been a total Federal investment of $12 billion in reclamation projects, only $5.4 of which has been for irrigation projects. Areas served by these projects generate almost $8 billion annually in increased economic activity,

supporting tens of thousand of farmers, their employees, those who provide materials and services for agriculture, and the rural economies created by a healthy farm industry.

These proposals would have the impact of forcing many farmers to pay 4 to 5 times that which they are paying now for water, which is the highest cost farming expense for most. This would mean the difference between a profit and a loss, and would put countless numbers of farmers out of business. This would have a profound impact upon not just farming economies, but upon the rural economies of the 17 western states as well.

Although I am committed to working with the Subcommittee to address any situations of abuse, I believe that we should wait until we receive the Congressionally mandated audit which the Bureau is scheduled to have completed this coming February.

Thank you for the opportunity to appear before you.

Senator BRADLEY. Now, I am glad that it only took us about 2 hours to get through the congressional witnesses, and we will now hear from the Department of the Interior.

Secretary Lujan, welcome to the subcommittee, and the floor is yours. Let me urge you to say whatever is on your mind.

**STATEMENT OF HON. MANUEL LUJAN, JR., SECRETARY, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY DENNIS B. UNDERWOOD, COMMISSIONER, BUREAU OF RECLAMATION; AND PAUL B. SMYTH, DEPUTY ASSOCIATE SOLICITOR, ENERGY AND RESOURCES DIVISION**

Secretary LUJAN. Thank you. I hope it does not take 2 hours to get through the Department of the Interior.

[Laughter.]

Secretary LUJAN. Thank you for the opportunity to present the administration's views on S. 2659 to amend the Reclamation Act of 1982 and on title XVI of H.R. 2567, which addresses the use of low cost water to irrigate surplus crops.

Before I go any further, Mr. Chairman, I do have a full statement.

Senator BRADLEY. Your statement will be put in the record.

Secretary LUJAN. Thank you, and I have with me the Commissioner of Reclamation, Bureau of Reclamation, Dennis Underwood, and Paul Smyth, who is the RRA Task Force member there in the Department.

Mr. Chairman, we all share a common goal, and that is to ensure individuals and other legal entities do not receive benefits of less than full cost water on land holdings greater than entitlements intended under the reclamation law and its amendments.

The present law provides no individual can receive low cost water on more than 960 acres of land. In 1982, the Reclamation Reform Act deemed 960 acres was an appropriate and equitable entitlement for a viable family farm.

However, Congress also determined that certain legal entities and farming practices would be allowed which would result in blocks of land in excess of the 960 acres being farmed as a unit and still receive the low cost water. There is no limit, for example, on the amount of land that can be placed in trust and still receive low cost water, provided no single beneficiary receives all of the economic benefit.

These practices and others have raised concerns that the intent of the Reclamation Reform Act of 1982 is not being realized. In

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1987, Congress directed a 3-year audit of all large land holdings and farm operations on land served by its projects. The purpose of these audits is to ascertain any abuses of acreage limitations and if the law is being properly administered.

Mr. Chairman, we know there are problems and believe these audits will highlight them. They will prove very useful in identifying problems and will provide us the information we need to ensure fulfillment of the goals of the act.

Mr. Chairman, we share the objective in your bill and similar legislation recently passed in the House. We believe, however, that enacting significant changes in the RRA now without the full benefit of the 3-year audit effort is premature.

We would prefer to complete the audit process, analyze our findings and report them to Congress as mandated in 1987. Toward that end, I have directed the Commissioner to finalize and submit Reclamation's third and final report on RRA limitations by February 1, 1991, and to include in that report our recommendations for changes to improve the program.

We admit there are some inequities and ambiguities in the present program. However, our audit so far has shown that most landholders are in compliance with both the letter and the spirit of the law. By and large, the beneficiaries of the reclamation program benefits are hardworking family farmers. Any further changes in the law should not interfere with these family farms or other legitimate farming practices upon which the farm economy depends. The full statement I have submitted for the record lists specific concerns and recommendations, Mr. Chairman, that we have in regard to the provisions of S. 2659.

With your permission, Mr. Chairman, I would like now to say a few words about title XVI of H.R. 2567, which addresses what are commonly referred to as double subsidies. The administration supports eliminating subsidies that promote production of surplus crops. However, the approach in H.R. 2567 raises questions of equity that preclude us from supporting it as it is written now.

To summarize, I would point out that title XVI of H.R. 2567 attempts to eliminate double subsidies by requiring all farmers who amend or renew contracts with Reclamation to pay full cost for water used to irrigate program crops regardless of the amendment.

Our concern with this approach is that full cost for water for reclamation projects varies tremendously. For some farmers, paying full cost would be little more than just an inconvenience. For others, it would be prohibitive and require finding alternative crops to produce. In many parts of the country, viable alternative crops may not exist and the imposition of full cost for water could result in farmers going out of business.

We believe this is not the appropriate solution to the problem of using less than full cost water to irrigate surplus crops. We are, however, anxious to work with you to find more equitable ways to address this issue.

I would be happy to answer any questions you or the committee would have on either bill, Mr. Chairman.

[The prepared statement of Secretary Lujan follows:]

PREPARED STATEMENT OF MANUEL LUJAN, JR., SECRETARY, DEPARTMENT OF THE INTERIOR, ON S. 2659

Mr. Chairman, thank you for inviting us to participate in your committee's consideration of Senate bill 2659 which would amend the Reclamation Reform Act of 1982. I have with me the Commissioner of Reclamation, Dennis B. Underwood.

I believe we all share a common objective which was expressed in the statement of managers accompanying the 1987 amendments to the Reclamation Reform Act of 1982, as follows:

"Simply stated, the main concern is that individuals or other legal entities may be improperly receiving the benefits of less than full cost water on landholdings which are greater than their entitlement under Reclamation law (e.g, 960 acres or the equivalent thereof for a qualified recipient, or 160 acres for a prior law recipient)."

This concern, can be summarized in a simple rule of thumb. If a legal device, such as a trust or farm management agreement shifts the economic benefit of less than full cost irrigation water from an eligible recipient to an ineligible one, it is a violation.

I agree with these objectives and am committed to insuring the Department carries them out through proper regulation and enforcement.

The present law provides that no individual can receive less than full cost water on greater than 960 acres This is buttressed by rules and regulations promulgated by the Bureau of Reclamation to ensure that the law is carried out. For example, Reclamation regulations prevent farm managers from sharing in the economic benefits of the farming operation by providing that farm managers can only receive a fixed fee for their services. And, we believe, Mr. Chairman, that this is also the intent of your bill.

The Bureau of Reclamation was established in 1902 to help develop the Western States. Its mission was to develop water projects to provide a dependable water supply for irrigation. The benefits of the Reclamation program were to be widely dispersed through landownership restrictions and residency requirements.

By the 1970's, changes in farming practices made some provisions of Reclamation law obsolete. Some farmers sought relief from restrictions of Reclamation law by placing land in their children's names, leasing large tracts of land, and so on. These activities made it clear that the restrictions established by Congress in 1902 no longer reflected the realities of modern farming. As a result, after much debate throughout the 1970's and early 1980's, Congress revamped Reclamation law by passing the Reclamation Reform Act of 1982. Finally, during 1987 Congress enacted legislation to fine-tune the RRA.

In its 1987 amendments to the RRA, Congress instructed the Bureau of Reclamation to audit all large landholders and operators by the end of 1990. In 1988 the Bureau initiated a program evaluation effort to review the activities of individual water users and water districts to determine: (1) if violations of the rules and regulations were occurring; and (2) if the law was being properly administered. A key component of this effort is the audit of all landholdings and operations over 960 acres. During 1988 and 1989, 213 reviews of water districts and over 525 audits of landholders for compliance with the acreage limitation rules and regulations were conducted. The Bureau has scheduled Water District Reviews of all districts subject to the acreage limitation provisions of Reclamation law and the audit of all large landholdings and operations by December 1990, the end of the 3-year period.

The results of these efforts and other key RRA activities have been presented lo Congress in two annual reports prepared in response to the 1987 amendments. The Bureau of Reclamation has found that the vast majority of water users are in compliance with Reclamation law.

In every case, where we have found a violation the Bureau of Reclamation has taken steps to rectify the situation, including assessment of full-cost charges and interest in accordance with the underpayment provision of the RRA. These steps have also included the initiation of legal actions to recover payment.

Rather than changing the rules and regulations or suggesting changes to the RRA in a piecemeal fashion, we have focused on analyzing the results of the reviews and audits now underway which will be finished by the end of this year. As noted earlier, this 3-year-evaluation period was directed by Congress in the 1987 amendments to the RRA. The goal of this effort is a systematic review of the RRA and the Bureau's regulations, and the development of a package of proposed administrative changes and legislation to improve the operation of the acreage limitation program.

Recent Congressional actions suggest that many members believe it best not to wait any longer to amend the RRA. We would like to reiterate that we believe it is

better to wait until the congressionally mandated audit is completed to make changes in the Act and the regulations. However, the Administration will work with the Congress to ensure that any enacted legislation is administratively feasible. I am a strong believer in the public deliberation process for enacting legislation and implementing rules and regulations. I appreciate the opportunity to present the Administration's views today. With that in mind, I would now like to go over some of the provisions of the bill.

Reclamation has carefully reviewed S. 2659 legislation amending the Reclamation Reform Act of 1982 (96 Stat. 1263). While the bill contains provisions dealing with a number of specific aspects of the RRA, perhaps the most significant in terms of impact are those sections concerning farm operations (amending sections 202(6) and 203(b) and adding a new section 202(8)). As we interpret these amendments, any operation would be limited to an entitlement of no more than 960 acres. We want to work with the Congress to ensure that these provisions do not threaten legitimate farming practices.

The definition of operator proposed in section 202(8) is keyed to the determination of who "performs the greatest proportion of the decisionmaking or supervision for agricultural enterprise . . . at a given point of time." Since it would be very difficult to determine who is the chief decisionmaker, it would be extremely difficult to enforce any provisions of the Act incorporating this concept. Further confusion is caused by "at a given point in time." A literal interpretation of these words would cause attribution of the entitlement to shift within a given year depending upon whether a farmer contracted for farming services and let the contractor make determinations as to how the service would be applied. A case in point would be crop dusting or harvesting.

The last sentence of the new section 202(8) making the employer of an operator or the owner of an operating entity also an operator may create problems. For example, the provision would seem to make General Motors an operator if a person operating a farm worked part-time at a GM assembly plant. It seems unlikely that Congress would intend this result.

Legitimate farming practices may be threatened by S. 2659. For example, the definition would prevent two brothers or neighbors from trading services since the operation of the farm would shift with the person performing the service at any given time. The language of the bill could also penalize a handicapped or disabled farmer in that it would not allow persons who may be temporarily or permanently disabled to look to a neighbor or relative, who is also a landholder, to operate the farm during a period of disability.

Based on the Bureau's experience in auditing landholders and operators and the complex nature of modern farming, we recognize that defining farm operations is a difficult task and additional work is necessary. Over the last two and one half years, the Bureau has conducted Congressionally mandated audits on all landholdings and operations in excess 960 acres. We have found that when dealing with well defined concepts such as landownerships and leasing we are able to institute reporting requirements that allow for the efficient administration of the program. However, our recent experience in attempting to obtain information or the concept of farm operator was not as successful. We expected to receive thousands of responses from landholders to the requirement that they report contract operators during the 1989 water year. In fact, less than 1,000 landholders reported the use of contract operators, thus highlighting the need to further refine reporting requirements.

As previously stated, in 1987, Congress directed, that the Bureau of Reclamation, at a minimum, audit those legal entities and individuals whose landholdings or operations exceed 960 acres within 3 years, by December of 1990, and to submit annual Reports to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs. These reports summarize the legal entities and individuals audited, the results of such audits, and the actions taken by the Bureau of Reclamation to correct any instances of noncompliance with the reclamation law.

Rather than prematurely address concerns over the operation of the present provisions of the RRA, we would prefer to finish this process, analyze the results, and present Congress with our findings in the last report to Congress. After the audits are complete we will be able to present a comprehensive list of concerns that can be addressed administratively or through legislation. Further, I have directed the Commissioner of Reclamation to include administrative and legislative recommendations in the final report to the Congress to be submitted by February 1, 1991.

Current information requirements have allowed us to obtain adequate information on existing landholdings, that we have been and are continuing to analyze. But as highlighted earlier, our efforts to obtain information on farming operations have

not been as successful. In order to address this, we are exploring a possible change to impose an information reporting requirement on farm managers, including acreage operated, and the basis for payment. This together with Internal Revenue Service and other government records, would substantially improve our enforcement capability. While these actions may increase the paperwork for farm managers, it would assure that the Bureau has adequate information upon which to determine who bears the economic risk in any farming arrangement. Our analysis is not yet complete on this issue, however, and we would await the completion of the ongoing Congressionally mandated audit process before making any firm recommendations.

At this time I would like to provide additional comments on other sections of S. 2659.

Amended section 202(4) would, in effect, prohibit qualified recipients from escaping ownership and pricing limitations by transferring landholdings to minor children. Such land is usually placed in a trust and the income from the trust is then used to take care of the children, making the children independent for Federal income tax. Under existing Reclamation law, this also gives the children an entitlement separate from his or her parents. Such transfers do exist and, in our opinion, represent a weakness in current law. The amended language in S. 2659 would prevent this practice.

We would point out two concerns, however: first, under this section, a 17-year old—who could in fact be independent of his or her parents, and own and work the land legitimately—would be treated in the same manner as a 2-year old who could not conceivably be independent. If this legislation is enacted as written you should be aware of this impact. We presume state law would define the age of majority for this provision, i.e. 18 or 21.

Second, this provision would apply rather abruptly to existing landholding arrangements. We believe consideration should be given to allowing a reasonable opportunity to bring landholdings into compliance with any new provisions. Compliance may include (1) termination of water deliveries to land that would become excess, (2) immediate disposal of excess land or (3) placing excess land under recordable contract for disposal within five years.

Amended sections 202(7) and 202(9) address the problem of nonresident aliens holding eligible irrigation land through entities organized under American laws. These amended sections would clearly restrict eligibility to entities in which all owners or beneficiaries are U.S. citizens or resident aliens. We support the intent of these changes; however, we believe some refinements should be considered so as to prevent the amended provisions from being unduly harsh.

We note that amended sections 202(7) and 202(9), which address qualified and limited recipients, may conflict with some international treaties, such as the German-American Friendship Treaty, in which the United States agreed in Article VII, paragraph 2 that "any new limitations imposed shall not be applied against enterprises already engaged in the activity at the time the new limitation is adopted."

Amended section 214(a) would limit the size of any trust to a single 960 acre entitlement. We agree with the intent to prevent the use of trusts to allow persons to obtain the benefits of less than full cost water upon more than 960 acres. We are concerned that in some instances trusts have been used as investment vehicles, serving in place of partnerships or other legal entities, rather than as estate or tax planning vehicles. Another approach may be to limit trusts to only family trusts and to further require that land placed in trust for minor children be attributed to parents. Nonetheless, resolution of this issue is not yet complete because we do not have the benefit of the final analysis from the ongoing Congressionally mandated audit process.

In addition, care must be taken in addressing concern in section 214(a) so as not to place an unreasonable administrative burden on trustees and interfere with legitimate farming practices. For example, when combined with section 214(a), the specific language in S. 2659 regarding farm operations may present such problems.

Amended section 224(c) of S. 2659 would require the Secretary to establish penalties for noncompliance with any provision of the RRA. However, the proposed language of S. 2659 is too vague. For example, it does not indicate whether the penalties are to be civil or criminal, or what activities are to be penalized. We are unable to make specific recommendations concerning appropriate penalty language until the completion of the Congressionally mandated audit process.

Amended section 224(e) would prevent former owners of excess land from reacquiring such land through foreclosure and reselling it a full market value. The language needs to be modified to protect financial institutions which initially acquired property involuntarily and are forced to reacquire it.

We support amending section 224(i) to provide a single method of computing interest used in conjunction with the underpayment provision of the RRA. This proposed change will address a troublesome administrative issue for Reclamation.

Amended section 228 and the proposed new section 229 address reporting requirements and interagency cooperation in the enforcement of the RRA. We generally support these two amendments, but need to complete the audit process before commenting upon the specific wording of these provisions.

At this point, Mr. Chairman, I would like to conclude my statement. I would be happy to answer any questions.

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PREPARED STATEMENT OF MANUEL LUJAN, JR., SECRETARY, DEPARTMENT OF THE INTERIOR, ON H.R. 2567

Mr. Chairman, you asked for comments on Title XVI of H.R. 2567.

The Administration supports the objective of Title XVI of H.R. 2567 to eliminate double subsidies, or more specifically, subsidies that promote the production of surplus crops. In the GATT negotiations, the Administration supports the elimination of input subsidies that are not generally available. Irrigation subsidies would be expected to fall in this category. At the conclusion of the Uruguay round, the Administration will revisit the entire issue of input subsidies. Action at this time would therefore be premature.

Farmers who receive water through Reclamation facilities produce a wide variety of crops. For example, Reclamation lands produce over 60 percent of the nation's vegetables and about 25 percent of fruits and nuts. About 37 percent of Reclamation lands grow program crops, but that represents only 3 percent of land devoted to such crops nationally. Over the period 1979-1986, acreage devoted to program crops on Reclamation project land declined by an acreage of 71,000 acres a year to 3.4 million acres.

After a four-year phase-in period, Title XVI of H.R. 2567 would allow only farmers who pay "full costs" for their water from a Federal project to continue to receive program crop payments. This requirement would become effective upon the renewal or amendment of contracts. For some projects, mainly those where major capital investments were made prior to the late 1950's, the full cost rate for water may be within range of the calculated ability of irrigators to pay. For others, the full cost rate might differ by a factor of 10 or more and be greatly in excess of the irrigators ability to pay.

In states where there are alternative crops available to be grown, the farmers could choose to raise crops not supported by the commodity program. However, in states like Colorado, the Dakotas, Nebraska, Wyoming and parts of Idaho, Montana, Oregon and Washington, farmers have only limited cropping options. Because of climate and soils and market conditions, they either grow program crops or they discontinue irrigated farming.

The Administration continues to support the elimination of subsidies that promote the production of surplus crops and we will be glad to work with the Committee in seeking a comprehensive solution to this issue after completion of the GATT negotiation.

Senator BRADLEY. Mr. Secretary, let me thank you for your testimony and let me also compliment you on Mr. Underwood's testimony before this subcommittee on a number of occasions over this period of time. It is a pleasure to have both of you before the committee.

Secretary LUJAN. Thank you, Mr. Chairman.

Senator BRADLEY. I was actually very pleased with some of the things you said in your testimony. I think that your support for closing the trust for minor children and foreign investors and phony and voluntary foreclosure loopholes is, I think, very important.

I also think that your expression of concern about trust as investment vehicles was helpful, and I think that your testimony that expresses concern about your information gathering, how you actually get this information, went to the heart of the problem.

How can you enforce something if you cannot get the information to enforce it?

So, Mr. Secretary, I want to thank you for your testimony. I was also drawn to what you had to say about double subsidies, but so as not to cloud the issue I would like to focus, if I could, on just the 960 acre limitation.

Do you agree with Congressman Pashayan that there really is not an upper limit on the size of farming operation that should receive subsidized water?

Secretary LUJAN. I think he was referring to somebody operating a farm on behalf of someone else. Not, perhaps, someone who does not own any land, but is in the farm operation business. I do not really know how to answer that. You know, somebody has to pick an arbitrary number, just like we picked an arbitrary 960.

As you know, it went all the way from 160 to 2,000 acres, and then I guess because 960 happened to fall right in the middle, that is how we picked it, and if the committee is looking at setting a limit on how many acres somebody could operate, I would imagine that it is going to be just the same kind of an exercise.

Senator BRADLEY. Let me say, as someone who has listened to the testimony, the argument about Aunt Nellie who has to live in town and has somebody farm it out in the flats for her sounds suspiciously similar to the argument of the reason we need a lower capital gains is because the small town hardware store owner who needs to sell his hardware store.

That is not to mix these issues, but it is to say that is how I heard this. Not to say that it does not merit that, but I think we need a little more depth of analysis before we reach that conclusion.

Let me ask you, are you familiar with the GAO report?

Secretary LUJAN. Yes, sir, generally.

Senator BRADLEY. Do you accept the facts, or do you deny any facts in the GAO report?

Secretary LUJAN. Well, I think we would have to go over them one by one, but let me just make one little comment before I have Dennis talk about Aunt Nellie living in town.

As I remember, this whole business of trusts started by somebody telling a story just kind of like Aunt Nellie living in town, except that this happened to be a young person, a young disabled person that was not able to operate it, not mentally able to do it, and that is why we needed to make provisions for the trust, and that is how the whole thing started, it seemed to me. That is why we put that trust exemption in there. But let me turn that over to Mr. Underwood.

Mr. UNDERWOOD. Mr. Chairman, in terms of the GAO report we are in the process now of auditing those people, those cases that were in the GAO report. We did not at the time try to interfere with the GAO's auditing of those, and we are in the process right now, and this has been the final year, and so we are examining them at this time.

Senator BRADLEY. You are doing what?

Mr. UNDERWOOD. We are auditing those cases.

Senator BRADLEY. You are auditing GAO?

[Laughter.]

Mr. UNDERWOOD. No. The farms that GAO made a reference to, those are being audited by our people now. In other words, the ones in excess of 960 acres. We are in the process of doing that.

I may want to make one mention, too, in terms of—you were talking about the limit of a farming operation. I agree with the Secretary, it is very hard to define, but I think there is a practical limit. This person is doing it for a fixed fee and sooner or later somebody is going to underbid him, so I think there is a limit to what a person could potentially do before other competition would set in.

Senator BRADLEY. Mr. Secretary, let me ask you just as the Secretary of the Interior, do you think it is problematic, at all, that a 23,000 acre farming operation, really, on some of the best farmland in America, gets subsidized water?

Secretary LUJAN. Well, that bothered me, as you know. That contract came to me for approval at the time, and I was bothered by that, and at first I turned it down. If you will remember, Senator, I did not approve that contract. However, the attorneys went back to work and made it pretty plain by name and by time who got the 960 acres and that is what the law called for.

Again, it is difficult for me to answer whether that should be above the limit of somebody operating it. I did not like the way the whole thing came out, but if what you are trying to get at is whether 23,000 acres is too much for somebody to operate, that I cannot tell you.

Senator BRADLEY. No. I am asking you, do you think a 23,000 acre farming operation should be getting subsidized water?

Secretary LUJAN. Well, in this case that is what the law says, and yes, we are providing the water.

Senator BRADLEY. So you do not see—you were on the conference committee on rec reform back in 1982, I think. I know Senator McClure was.

Secretary LUJAN. I think that was kind of a back-door way of continuing to get subsidized water. To tell you the truth, Senator, I would not want to go at it that way again. Perhaps backwards would be a different story. If somebody is there very aggressively soliciting farmer A, farmer B, farmer C and then eventually builds up to 23,000 acres, maybe that is a different story. But I was not comfortable with it, I should say.

Senator BRADLEY. So you do have some discomfort with the fact that subsidized water is going to a 23,000 farming operation.

Secretary LUJAN. I should not say just because it is 23,000 acres. I think it is because the way it came about to be. Maybe that was what my problem was with it.

Senator BRADLEY. What do you mean by that?

Secretary LUJAN. Well, that it was a farm—one unit, and it was a vehicle that was used. I think the primary intention was to continue receiving subsidized water.

Senator BRADLEY. So they did what?

Secretary LUJAN. So they used the law in order to be able to do that, all within the law, but one would feel better about it if I felt the primary reason was to recompense those loyal employees that would be—I would have looked at it a little different, but I did not think that that was the basis.

Senator BRADLEY. So as you say, they essentially were operating a big farm and then the law came along and they then figured a way to use the law to continue to operate the program?

Secretary LUJAN. I think that was the case.

Senator BRADLEY. Do you think that is good for the reclamation program as a whole?

Secretary LUJAN. No, sir.

Senator BRADLEY. Pardon?

Secretary LUJAN. No, sir, that is why I resisted it at first. I looked for ways to resist it.

Senator BRADLEY. So because you looked for ways to resist it—and I remember our conversation. You were, I thought, very strong and clear, and then there was the change. My question is, therefore, does what we are doing here today make sense to you?

Secretary LUJAN. Well, yes, it does. When I was voting on the Reclamation Reform Act and participating——

Senator BRADLEY. We are speaking here of the 960 limitation making sense?

Secretary LUJAN. Yes. When we were considering it, my basic thought was not necessarily to do away with big farming—somebody mentioned General Motors. If General Motors wants to buy a farm and farm it, that is fine with me. As a matter of fact, it would probably be very good. They probably would be very efficient. But I felt that no one should get the below cost water for more than 960 acres. Now, that opens up a whole bunch of things—you know, operators. But if you look at—what I thought is that no one should get more than 960 acres.

Senator BRADLEY. You know, in the GAO study there was this 12,345 acre farm before the Reclamation Reform Act passed, and after it passed it reorganized itself into 15 separate landholdings through 18 partnerships, 24 corporations and 11 trusts, but it still operated as a single farm. I do not know about you, but it sounds to me like the employment act for the lawyers and accountants. You clearly cannot think that is consistent with the reclamation act.

Secretary LUJAN. As I say, those things bother me. Just like the other one, it is broken up for the purpose of receiving low cost water.

Senator BRADLEY. So you would urge us to try, if we can—and you have been very helpful in your testimony in pointing out some of the loopholes, but you would urge us to continue to work to try to close some of these loopholes?

Secretary LUJAN. Yes, sir.

Senator BRADLEY. Thank you very much, and I might—before I yield to Senator McClure, I was, as you can imagine, a little disappointed that you did not immediately endorse the bill and say you thought we ought to pass it today, but your restraint—I wonder why you said you have your third phase—and that will come in February, but passing the bill would not prevent you from completing the third phase, would it?

Secretary LUJAN. No, it would not. I feel like in most cases when we are directed to complete a certain task, in this case the 3-year study, we should complete that study. We would be happy to make—even help you with this whole thing, if the help were needed—suggestions as to what amendments would be appropriate.

Senator BRADLEY. But the reporting requirements in the bill, would that help you get information?

Secretary LUJAN. I would think so. That is what the Bureau of Reclamation tells me.

Senator BRADLEY. So at least that aspect would be very helpful would it not?

Mr. UNDERWOOD. Yes, and there is some information, as pointed out in our testimony, that we would like to get access to that I think would help in the administration of the program.

Senator BRADLEY. Well, you know, we had some correspondence asking for your suggestions for amendments, and I would appreciate it if you would take a look at that correspondence, and I think we got one letter back and we had maybe, I think, one amendment. Maybe I am wrong on that, but please take your presentation today as an invitation to communicate with the committee as soon as possible with suggestions.

Secretary LUJAN. In the full testimony there are some suggestions, Senator.

Senator BRADLEY. I know, and I was actually complimenting you on some of those suggestions, which I did not know until this moment you would recommend to be amendments.

Senator McClure.

Senator MCCLURE. Mr. Chairman, thank you very much, and thank you, Secretary Lujan, for your testimony.

I am going to make a rather general observation here, and I hope other witnesses will hear it as well, because I will revisit the same kind of general framework when I get further along in the hearing.

I want to make a distinction between the various things we are trying to talk about today, and I think the conversations have been somewhat muddied and confused between them.

First of all, I want to identify if we can what the law permits or requires today but is not being achieved today, and second, to separate that from a misunderstanding of what the law is that is reflected in some criticisms of your administration of the law, but it is based upon a misunderstanding of what the law provides, and third is, those suggestions that come to us with clear understanding, or perhaps not a clear understanding of what the law is, but a clear statement of what they wish the law was rather than what it is.

I think if we can address it in that framework then we may narrow down on what is the abuse, if indeed there is an abuse, what is a misunderstanding, if indeed that is the case, and what is the difference of opinion about what the law ought to be.

With respect to the first of those three points, what the law permits or requires today but is not being achieved, if we can narrow that down to the extent that you can today between what can be achieved under the law but has not been yet, and what you believe cannot be achieved under the law and needs some change.

Now, if I understand, Mr. Secretary, in that latter regard you have suggested you would be in a better position to answer that last question after your study is completed. Am I correct?

Secretary LUJAN. That is correct.

Senator MCCLURE. That indeed, if you do not complete that study, then you are somewhat hampered in your ability to answer that question?

Secretary LUJAN. The Bureau of Reclamation has told me that that is exactly correct.

Senator MCCLURE. We did in the 1987 hearings and act discuss some of the very same issues we are talking about today and said, we do not know enough about this. Now go do your audit.

As a matter of fact, we were somewhat critical of the Department in 1987 for having failed to do what the 1982 act required, and that is why we directed, with a specific direction, now go do your work—do what you have not done between 1982 and 1987.

I am somewhat sympathetic with your suggestion that you ought to at least be given the opportunity to complete that study and also a little bit impatient that now in 1990, nearly 8 years since the revision of the law, we are still asking you to do some basic work.

So understand I am not completely complacent with the pace of the work that is being done, but I understand the complexity and the difficulty.

I want to point out one thing, and I am not going to spend a lot of time at this point on the GAO. I just want to point out that GAO, if I recall correctly, in their report said that there is no violation of the law or regulation that we can point to. Is that not correct?

Secretary LUJAN. That is correct.

Senator MCCLURE. But they erected a different and slightly nebulous standard of what the Congress expected to achieve but is not, and I think in that latter regard they listened to some congressional voices and ignored some legislative history, which I guess is par for the course and I will not belabor that subject.

Let me make a very generalized statement, Mr. Secretary, because your short statement under which you attached your testimony raises in the first paragraph something that is profoundly troubling to me. I suspect you did not mean it to be profoundly troubling, but nevertheless it goes way beyond the subject of this hearing, and that is with respect to GATT agreements and international trade negotiations, what is a subsidy that is to be banned by agreements.

Boy, if we are reaching down to a reclamation program as that kind of thing, we have a world of problem. Not just with this bill. We really will get into, what is the subsidy to shipping if we dredge a harbor?

Senator BRADLEY. Did he say that? No, I do not doubt it.

[Laughter.]

Senator MCCLURE. In the GATT negotiations the administration supports the elimination of input subsidies that are now generally available. Irrigation subsidies would be expected to fall in this category. "At the conclusion of the Uruguay round the administration will revisit the entire issue of input subsidies" from the statement. Yes, he said that. I mentioned harbors.

Secretary LUJAN. Senator, I think I was punting on that, just to say well, something else is driving this subsidy issue.

Senator McCLURE. Boy, if it is—if that statement—if administration policy is as broad as that statement we are going to have a very interesting future.

[Laughter.]

Senator McCLURE. I asked Senator Heinz whether or not he believes that a depreciation on equipment was a subsidy, and he said no, he did not think so. I would guess the administration thinks it might be, and there are a world of examples of that nature.

That is one of the difficulties of trying to forge international agreements in free trade, because everybody treats these problems differently, and the entire question of tax policy is different in each country and has different effects upon their ability to compete and their pricing in international trade.

I will not go further in that regard at this time, but I just could not help but make some reference to the fact that that will lead us not just here, but across the board, in a lot of directions we had better be careful about, and I hope that really does not color our discussion of this legislation, and I hope it will not.

Mr. Secretary, are you in a position on the basis of the audits you have done so far, or you, Mr. Underwood, on the basis of the audits you have performed so far, are you able to tell us how much problem you are having in the administration of the current law that you believe is—that you cannot administer because the law is imprecise or too vague or impractical?

I think you made some reference, Mr. Secretary, in your statement to some of those. Are there any other examples you could give us of changes in the law that are now clearly necessary?

Secretary LUJAN. I also did say that by far most of the operations were in compliance with both the letter and the spirit of the law. This says, "However, our audit so far has shown that most landholders are in compliance with both the letter and the spirit of the law." But we admitted that there were some inequities and ambiguities in the present program.

Mr. UNDERWOOD. Let me just add that we have looked at over 40,000 landholders, and if you are using a statistic, 99 percent of those are in full compliance, and the ones that were not are now. Most of the problems that we were incurring were underpayment of water charges or no forms filed.

A lot of that had to do with the implementation of the act itself—a lot of problems with the communication and understanding of the act. We have done a couple of things to improve that and they increased the compliance. Some of those have to do with fact sheets. We have developed 13 fact sheets which really are 1-pagers that help farmers and districts understand their responsibilities in the act itself.

We have also come up with an easy form just like your income tax, so that people that have simple landholdings can understand those.

We have also, in terms of helping our own people, we have developed an audit manual and we have developed trust review guidelines, and we have also developed leased and farm operating agreement review guidelines.

We have also developed what we refer to as a program evaluation up-date, and that is a bimonthly publication that helps our

people keep up to speed in making sure that the law is implemented in a consistent manner and a correct manner.

Senator McCLURE. If you have specific changes, or if you have problems that you see right now that are insurmountable in practice—you understand what we intend but you simply cannot get there because of X, Y, or Z—would you submit for the record a listing of those that you are sure of, perhaps separately?

Then, secondly, a listing of those things you are not sure of but you believe possibly might help, so that we have some guidance as to whether we have a problem with the law as it is written, or whether or not it is just a question of applying the law.

Because you do have regulations, you are applying the regulations, and maybe at the end of all of this review you will say, there is no change in the law necessary, or maybe you will say some change in the law is necessary. Is that not possible?

Secretary LUJAN. Correct.

Senator McCLURE. An example was given earlier by the Chairman with respect to what I understand to be the Boswell farming operation in California—I think that is what you were referring to, was it not, Mr. Chairman?—in which land was placed in trust.

Now, following the enactment of the 1982 legislation they were required by the terms of that law to divest themselves of ownership, is that not correct?

Secretary LUJAN. That is correct.

Senator McCLURE. Have they done so?

Secretary LUJAN. Yes, sir.

Senator McCLURE. What they have done is divested themselves of ownership, is that correct?

Secretary LUJAN. That is correct.

Senator McCLURE. And that ownership no longer at the end of this trust period will reside in the Boswell family at all, is that correct?

Secretary LUJAN. That is correct.

Senator McCLURE. Then what troubles you about it, in terms of they did what the law said to do: to get rid of this excess land. They did, and you have just said yes, they did. All right, what troubles you about it?

Secretary LUJAN. Well, if you will remember, when they first came to us with the first proposal, and it had gotten up pretty high, until by the time it comes to me it is pretty well reviewed.

Senator McCLURE. I realize just how high that is.

[Laughter.]

Secretary LUJAN. I did not mean it in that sense. But what I mean is, by the time it gets to me, then I guess I am the final one, because it has been pretty thoroughly reviewed, and I was uncomfortable because at that time it said that at some point in the future someone who we did not know today would receive that land.

It bothers me that in the context of your question some court might have ruled at some point or another that it was legal to do it that way.

Senator McCLURE. But you did not.

Secretary LUJAN. I did not think so.

Senator McCLURE. They changed it?

Secretary LUJAN. They changed it.

Senator MCCLURE. Now you know who will own it, clear title?

Secretary LUJAN. At some point in time.

Senator MCCLURE. At a defined point in time?

Secretary LUJAN. At a defined point in time, that is correct.

Now, it bothers me because if it would operate the way I thought it should operate at the time that I was voting on this bill and participating in the discussion, a deed would have been given or sold, or whatever, and a note taken, probably, to each one of those 326 individuals. Now that, to me, is a divestiture complete, without all of these nuances that come in that transaction.

Senator MCCLURE. Now, is it not true that right up front the legal title passed to the trustee?

Secretary LUJAN. To the trustee, it did. Not to the individuals.

Senator MCCLURE. But the Boswell family divested themselves of the legal ownership of that land?

Secretary LUJAN. Yes.

Senator MCCLURE. That was pursuant to the law and you approved?

Secretary LUJAN. Well, I think so, and that is one of those things that perhaps you are saying, do you think maybe by regulation you could do it, or why does it bother you?

The answer to that is that that is one of the things that bothers me. Of course it is legal. A lot of things are legal. I just do not think that that was in the spirit of, at least as I saw, the reclamation reform at the time that I was working on it.

Senator MCCLURE. Then let me ask you one further question with regard to that, and believe me, I have no vested interest in the Boswell family or the trust that was established, and although I have two attorneys in my family, neither of them are employed in any way to supervise or to scrutinize or in any way get paid out of this lawyer's dream, or this lawyers' employment act.

Senator BRADLEY. That is lawyers and accountants.

[Laughter.]

Senator MCCLURE. One of my sons is an accountant. If one looks at conflicts of interest around here, I do enough every day to keep them employed every day for the rest of their life.

[Laughter.]

Senator MCCLURE. The thing that I guess really bothers me, you believe that at the end of this period of this trust we will then have accomplished what we intended in the law?

Secretary LUJAN. Exactly.

Senator MCCLURE. You are troubled because it takes so long from the beginning of the trust until the dissolution of the trust, is that correct?

Secretary LUJAN. Probably that, yes. That is one aspect of it.

The aspect is that this whole thing in my mind—and that is a difficult thing to do, to put yourself in what somebody else was thinking—came about as a way to be able to continue receiving the low cost water. I believe that if the law had not been there to force this action that it would have never happened.

Senator MCCLURE. I think that is probably correct, but the law was there, and the action was taken, and now I am trying to figure out just exactly what else we expected them to do. Divest them-

selves of the title, put it into the ownership of people that falls clearly within the 960 acre limitation——

Secretary LUJAN. And then give them the opportunity to let that same company operate it, or a competitor.

Senator MCCLURE. You would rather that they had employed the operator rather than it be vested in the trustee for a period of time?

Secretary LUJAN. Probably.

Senator MCCLURE. Now, you had the authority under the law to reject that proposal, did you not?

Secretary LUJAN. I do not believe I did, not the second proposal.

Senator MCCLURE. Why not?

Secretary LUJAN. Because it was legal in every way.

Senator MCCLURE. In what way is it legal, if, as a matter of fact, it did not accomplish the purpose of the act?

Secretary LUJAN. Well, we all talk about the intent of Congress, and I guess in my mind that was not the intent of Congress. That is what the law says. The words in the law say that, but I do not believe that it was really the intent.

Senator MCCLURE. But you do not believe in the fact that it is all vested in the trustee for a period of time meets the purpose of the law?

Secretary LUJAN. Barely.

Senator MCCLURE. Well, it either does or does not, and you apparently decided it did, because you approved it, is that correct?

Secretary LUJAN. Yes.

Senator BRADLEY. Mr. Chairman, he said he believed he did not have the authority to disapprove it.

Senator MCCLURE. But he did approve it. Regardless of what the reason my have been, he did approve it. That is factual, and I assume that he thought what he was doing was legal when he did it.

Secretary LUJAN. I checked it with every solicitor in that building before I did it, believe me.

[Laughter.]

Senator MCCLURE. That is part of the problem.

[Laughter.]

Senator MCCLURE. In your prepared statement, you make references to trusts—trust arrangements and the purposes of trusts—and you have suggested at one point that we ought to define a trust beneficiary in terms of their dependent status, or by age, an arbitrary, objective test rather than a subjective, dependence or independence test, is that correct?

Secretary LUJAN. Yes. It seemed to me that it would smoke out, so to speak, someone who was doing it only for the purpose of receiving the low cost water if the minor child was treated the same as they do in the Internal Revenue Service, to the benefit of the parents, and I felt that that way it would not be just a scheme to receive the low cost water.

Senator MCCLURE. You have suggested, however, in one sentence that it might be possible—or you recognize the possibility of a trust arrangement being within the purposes of the act, and the contemplation of the Congress, as estate or tax planning vehicles, am I correct——

Secretary LUJAN. That is correct.

Senator MCCLURE. And you do not wish to prohibit those?

Secretary LUJAN. I do not.

Senator MCCLURE. At one point you suggested a trust beneficiary 2 years old is obviously different than a trust beneficiary 17 years old.

Secretary LUJAN. For the purposes of low cost water.

Senator MCCLURE. For the purposes of this act.

Secretary LUJAN. Yes.

Senator MCCLURE. The 2-year-old obviously is not a manager and does not work on the farm.

Secretary LUJAN. Correct.

Senator MCCLURE. The 17-year-old might.

Secretary LUJAN. Could very well, yes.

Senator MCCLURE. You do not want to see us creating independent status or an emancipated manner simply by the creation of a trust who then becomes a separate entity.

Secretary LUJAN. I believe so. I think that is what I said.

Senator MCCLURE. Do you want us—do you suggest we make a direct reference to the Internal Revenue Code for that definition?

Secretary LUJAN. No. I would probably say, when the child reaches the age of maturity—now I am getting in trouble.

Senator MCCLURE. Well, you get in trouble because we nearly always have some exceptions to the general rule, and there is one where it is truly a dependent child, a disabled child, for example, for whom the parent has a continuing legal responsibility of support.

Secretary LUJAN. That is correct.

Senator MCCLURE. You would make an exception for that, would you not?

Secretary LUJAN. That is correct.

Senator MCCLURE. So we have to be careful not just to make an arbitrary or flat rule that has no exceptions.

Secretary LUJAN. But you see, that is what got us into trouble in the first place—the disabled young person whom we wanted to protect—and so therefore we put the trust in. You cannot foresee every single possibility, and that is why these things are revisited, it seems like to me.

Senator MCCLURE. Well, I understand that. That is what we are trying to do, is write a statute that will help you administer the law the way we want the law administered, however it is we define that.

I think that out of the three categories that I mentioned earlier, the difficulty of achieving the purposes of the statute as distinguished from those who believe that we ought to do something else, they either thought we intended to or thought we should, or think we should, the greatest push for change in the legislation lies in the last two categories rather than in the first.

I would also repeat what I said earlier, and I will repeat it only for emphasis. I know you have difficulty in applying the statute because it is difficult to define. We have gone through just a few, but very few of those difficulties.

Some of it also lies in the fact that the Department has not been very aggressive in doing this. The statute was passed in 1982. We

waited 5 years, the better part of 5 years, and saw you were not even doing the audits—not you personally, obviously—and said now at least go out and get the information you should have been doing for 5 years and you have not, and now we are 3 years farther down the line and we are still saying, hey, do some more. You have not done it yet.

While I recognize it is difficult, it has to be done. The 99 percent of the people who are doing it right out there are entitled to no less than that. The 100 percent of the taxpayers that are out there are entitled to no less than that, and those who are operating at the margins need to know what margin is tolerable so that they do not get accused of being illegal if, as a matter of fact, they are seeking what is a legal arrangement under the law and your regulations.

Mr. Chairman, I have some other questions I will submit in writing for response in writing.

Senator BRADLEY. Thank you very much, Senator McClure.

Mr. Secretary, I want to thank you for your testimony, and as I hope you know, this is a serious attempt to look at what I see as a serious problem for the Bureau of Reclamation. It has been characterized today in a stereotypical way as an East versus West struggle, because the Chairman of the subcommittee is not from the West, and we have had a chart put before us that purports to make that argument.

I do not intend to dwell on this, but I do think the record should reflect a few things before we move on. Projects in the East do not provide irrigation to project users. Projects in the East do provide some hydro power, but not nearly as much as the huge projects at Glen Canyon or Grand Coulee or Hoover. Eastern projects are primarily for flood control and navigation, which are nonreimbursable costs. That is no surprise, therefore, that eastern repayment percentages are low.

Now, western projects also provide for flood control and navigation. In fact, California has about $4.8 billion in Corps expenditures, so it seems that the Western States pay back more because they get more benefits—namely, irrigation and hydro power, in addition to flood control and navigation.

Now, according to this chart, the Federal Government has spent about the same amount of money on nonreimbursable cost in the two regions, about $110 billion. The West, however, got $85 billion in reimbursable cost, while the East got only $11 billion, so the gap between us is not so great that it should cloud our view of this very narrow issue, or our efforts to protect the integrity of the Bureau of Reclamation.

So Mr. Secretary, I simply wanted the record to reflect some of these facts. I will not ask you to comment. We have a long way to go in the next hour, and I want to thank you very much for your testimony.

Secretary LUJAN. Thank you very much.

Senator MCCLURE. Mr. Chairman, might I respond very briefly, because I do not want the chart to be misunderstood or misrepresented.

The Chairman made reference to great power projects like Glen Canyon Dam or others. I think TVA is not in the West. It is also a power project, as well as having other purposes, and is a rather

massive hydropower project, and it has revitalized a region. Western taxpayers helped to pay the cost.

I would also point out that power projects pay back every cent with interest. I have a seaport in Idaho, and I am sure that must come as a great surprise to most people, looking at the map. Recognize that we are 400 miles from the ocean. There is a seaport in Tulsa, Oklahoma, a long ways away from the ocean. Those projects are nonreimbursable. Not one penny of interest or principal is paid back.

So just to say that, well, we get irrigation benefits means that somehow we are different, yes, it means we were dry. We did not have the benefit of rainfall.

In terms of regional development, the country decided some years ago to get people to live in those dry areas it would be beneficial to the country as a whole to invest some money in irrigation projects. The irrigation beneficiaries pay that principal back, without interest, unless they happen to be in one of the more recent projects in which their ability to pay was less than the repayment requirement, and then there was a concession made. But in most of those cases, power benefits pay that cost back to the Treasury.

That is not true of a flood control project, whether it is in Idaho or in New York or in Alabama. It is not true of navigation projects. It is not true of harbor dredging. It is not true of a whole lot of other projects—water projects and others—that because of the difference in terrain and geography and climate are different projects in a different area of the country.

That has always troubled me that people would say well, because yours is irrigation water you are going to have to pay, and because we do not need the irrigation water we will take other projects and we do not have to pay. That is the essential political debate, I guess, that casts it in some kind of a regional basis, and it is more directed towards the double dipping issue than it is against the repayment question.

Senator BRADLEY. I am very pleased to hear the Senator say that.

Senator MCCLURE. And of course, it has nothing to do with a 960 acre limitation and its application.

Senator BRADLEY. And the Senator from New Jersey would argue it is related, because to the extent we abuse that 960 acre limitation, it makes it more difficult to continue with the $85 billion that flows for the irrigation projects which are the subject of this committee and which serve a national purpose, and which should serve the purpose for which they were designated, and that is primarily and exclusively for farms of under 960 acres, which is the purpose of this hearing.

Now, Mr. Secretary, let me thank you very much. The comments were offered as an olive branch, and I am very pleased to see that the Senator from Idaho took it, and we appreciate your willingness to be here and share your thoughts with us.

Secretary LUJAN. Thank you very much.

Senator BRADLEY. Our next panel is from the GAO, and in order that we might get through this hearing, I am going to impose some severe limitations on the remaining panels.

We have Mr. James Duffus III, who is the Director of Natural Resources Management Issues, GAO, Stanley Feinstein, Leo Ganster, George Senn.

I would like to welcome them all to the committee. There will be one witness, that will be Mr. Duffus. Feel free to make your statement. We would like for you to limit your statement, if possible, to 10 minutes and we will limit questions so that we might get on to the next panel.

**STATEMENT OF JAMES DUFFUS III, DIRECTOR, NATURAL RESOURCES MANAGEMENT ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY STANLEY G. FEINSTEIN, SENIOR ATTORNEY, OFFICE OF THE GENERAL COUNSEL; LEO GANSTER, ASSISTANT DIRECTOR; AND GEORGE SENN, EVALUATOR IN CHARGE**

Mr. DUFFUS. Thank you, Mr. Chairman.

You have introduced my colleagues, so I will not do that.

We are pleased to here today to discuss our October 1989 report on the implementation of the 960-acre limitation for federally subsidized water under the Reclamation Reform Act of 1982.

The report discusses whether the act's acreage limitation is being implemented in a manner consistent with the statute and congressional expectations. It also discusses whether large farms have been reorganized since the act was passed to receive subsidized water on acreage that exceeds the legislatively mandated limit, and if so, how they have been reorganized.

We will also discuss our June 1990 report on the Westhaven trust arrangement which enabled a 23,238 acre farming operation to be irrigated with subsidized water.

Finally, we will provide our views on certain provisions of S. 2659, recently introduced to amend the 1982 law.

In summary, we found that the Reclamation Reform Act and the Bureau of Reclamation's implementing regulations do not preclude multiple landholdings, each of which is within the 960-acre limit, from continuing to be operated collectively as one large farm, while individually qualifying for federally subsidized water.

Some farmers have taken advantage of this loophole by using various partnerships, corporations and/or trust arrangements to organize their farms into multiple, smaller landholdings and become eligible to receive additional federally subsidized water from the bureau.

For all practical purposes, these smaller landholdings continue to be operated collectively as single large farms, much as they were before being reorganized.

While these reorganizations are not precluded by the act, they are not consistent with what we believe that Congress was trying to accomplish in establishing the 960-acre limit.

A consequence of these reorganizations has been a reduction in revenues to which the Federal Government would have been entitled if the multiple landholdings had been considered collectively as large farms, subject to the act's 960-acre limit. This reduction in

revenues likely will continue to occur annually under the existing act.

We believe that if federally subsidized water is to be limited to no more than 960 acres of leased and/or owned land being operated as one farm or a farming operation, the act must be amended.

Our October 1989 report included proposed legislative language to apply the act's acreage limit to farms and farm operations which are evidenced by indicators of operation, ownership, management and other factors. S. 2659 would address the indicator of an operator of a landholding or parcel of irrigation land, but does not consider other indicators.

While both revisions are aimed at accomplishing the same purpose, we believe that because our suggested legislative language addresses more indicators, it would more effectively close the loophole that has allowed multiple landholdings to operate together as one large farm and receive subsidized water on the entire acreage.

On the basis of the legislative history of the Reclamation Reform Act of 1982, we believe that the Congress expected to stop the flow of federally subsidized water to owned and/or leased land over 960 acres, being operated as one farm.

For example, the conference report that accompanied the act stated that both the Senate and the House agreed to reduce the subsidy for larger farming operations, and that the benefits of the new law should be available only if a water district agreed to amend its contract with the Bureau to reduce the subsidy for farming operations exceeding 960 acres.

However, the act does not specifically preclude multiple landholdings from individually qualifying for federally subsidized water while being operated collectively as one large farm.

For our October 1989 report, we selected eight farms that were larger than 960 acres before the 1982 act was fully implemented in order to determine whether farms had been reorganized to receive subsidized water on more than 960 acres. The eight farms are not necessarily representative of all large farms throughout the West; however, they do provide examples of how large farms have been reorganized through partnerships, corporations and trusts.

We developed 11 indicators, any one of which would suggest that individual small landholdings are, in fact, parts of larger farms. Most of these indicators focus on arrangements between and among owners, lessees, and/or farm operators rather than on the individual landholdings.

These indicators are not absolute determinants in themselves, but when they are applied to entire farming operations, they suggest that for all practical purposes, these landholdings continue to be operated collectively as single large farms.

Examples of these indicators include situations in which the same individuals make management decisions for multiple landholdings; a single farm management company operates multiple landholdings; or the farm manager or operator acknowledges that the small landholdings are being operated collectively as one farm.

I have included with my complete statement an attachment which lists these 11 indicators, Mr. Chairman.

In six of the eight cases we selected, the owners or lessees have reorganized large farms into multiple, smaller landholdings to be

eligible to receive additional federally subsidized irrigation water. For example, in one case, a 12,345-acre cotton farm, which is roughly 20 square miles, operating under a single partnership, was reorganized into an elaborate network of 15 separate landholdings through 18 partnerships, 24 corporations and 11 trusts.

The chart to my left graphically depicts how this farming operation was reorganized. This is also included as an attachment to my statement.

Another vivid example is the Westhaven Trust arrangement, that enables a 23,238 acre farming operation to be irrigated with subsidized water. The J.G. Boswell Company, a large farm operator, located in the Bureau's Central Valley project, has taken advantage of the act's provision that exempts from the 960-acre limit land held for beneficiaries by a trustee in a fiduciary capacity, as long as no single beneficiary's interest exceeds the law's ownership limits.

The act does not preclude multiple landholdings from being operated collectively under a trust as one farm, while qualifying individually for federally subsidized water. Accordingly, the J.G. Boswell Company was able to reorganize land of the Boston Ranch Company, a wholly owned subsidiary, by selling the 23,238 acres to the Westhaven Trust in May 1989 with the landholdings attributed to each of 326 salaried employees.

According to the Department of the Interior's Office of the Solicitor, because the landholdings attributed to the 326 trust beneficiaries ranged from 21 acres to 547 acres per beneficiary, the trust meets the act's requirement that no individual beneficiary interest exceeds 960 acres. Thus, each landholding was eligible to receive federally subsidized water.

The act does not preclude large farming operations organized as multiple landholdings under a trust from receiving federally subsidized water on the entire acreage.

However, this situation is not consistent with what we believe that Congress was trying to accomplish in establishing the 960-acre limit.

Senator BRADLEY. Mr. Duffus, could you summarize at this point? I am sorry.

Mr. DUFFUS. Yes.

As I mentioned, in the six cases we reviewed, the reduction in revenues from providing the subsidized water to the reorganized farms was $1.3 million annually. And the reduction in revenues from the Westhaven Trust amounted to about $2 million on an annual basis. And these reduced revenues will recur unless the act is changed to preclude the multiple landholding arrangement.

I would like to turn now briefly to our views on S. 2659, Mr. Chairman.

Senator BRADLEY. Mr. Duffus, could we submit those views for the record?

Mr. DUFFUS. We would be glad to submit them for the record, Mr. Chairman.

Senator BRADLEY. Let me ask you—do you believe that we should wait until every last Bureau audit is completed to classify farm operations?

Mr. DUFFUS. We do not think that the audits will provide the information needed to make the decision that the Congress faces.

As we point out in our report, the Bureau is not likely to discover those types of situations where you have reorganizations and multiple landholdings being operated collectively as one unit. That is primarily because the Bureau will use the law and its implementing regulations as the criteria, and that focuses on landholdings rather than farms or farming operations.

[The prepared statement of Mr. Duffus follows:]

PREPARED STATEMENT OF JAMES DUFFUS III, DIRECTOR, NATURAL RESOURCES MANAGEMENT ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE

Dear Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our October 1989 report on the implementation of the 960-acre limitation for federally subsidized water under the Reclamation Reform Act of 1982, as amended.[1] The report discusses whether the act's acreage limitation is being implemented in a manner consistent with the statute and congressional expectations. It also discusses whether large farms have been reorganized since the act was passed to receive subsidized water on acreage that exceeds the legislatively mandated limit and, if so, how they have been reorganized. We will also discuss our June 1990 report on the Westhaven trust arrangement, which enabled a 23,238-acre farming operation to be irrigated with subsidized water.[2] Finally, we will provide our views on certain provisions of S. 2659 recently introduced to amend the 1982 law.

## RESULTS IN BRIEF

In summary, we found that the Reclamation Reform Act and the Bureau of Reclamation's implementing regulations do not preclude multiple landholdings, each of which is within the act's 960-acre limit, from continuing to be operated collectively as one large farm, while individually qualifying for federally subsidized water. Some farmers have taken advantage of this loophole by using various partnerships, corporations, and/or trust arrangements to reorganize their farms into multiple, smaller landholdings and became eligible to receive additional federally subsidized water from the Bureau. For all practical purposes, these smaller landholdings continue to be operated collectively as single large farms, much as they were before being reorganized. While these reorganizations are not precluded by the act, they are not consistent with what we believe the Congress was trying to accomplish in establishing the 960-acre limit.

A consequence of these reorganizations has been a reduction in revenues to which the federal government would have been entitled if the multiple landholdings had been considered collectively as large farms subject to the act's 960-acre limit. This reduction in revenues likely will continue to occur annually under the existing act.

We believe that if federally subsidized water is to be limited to no more than 960 acres of leased and/or owned land being operated as one farm or farming operation, the act must be amended. Our October 1989 report included proposed legislative language to apply the act's acreage limit to "farms" and "farm operations" which are evidenced by indicators of operation, ownership, management and other factors. S. 2659 would address the indicator of an operator of a landholding or parcel of irrigation land, but does not consider other indicators. While both revisions are aimed at accomplishing the same purpose, we believe that because our suggested legislative language addresses more indicators, it would more effectively close the loophole that has allowed multiple landholdings to operate together as one large farm and receive subsidized water on the entire acreage.

## BACKGROUND

Let me briefly present some background information on how the acreage limitation under reclamation law has evolved. From 1902 to 1982, the Department of the

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[1] "Water Subsidies: Basic Changes Needed to Avoid Abuse of the 960- Acre Limit" (GAO/RCED-90-6, Oct. 12, 1989).

[2] "Water Subsidies: The Westhaven Trust Reinforces the Need to Change Reclamation Law" (GAO/RCED-90-198, June 5, 1990).

Interior's Bureau of Reclamation provided relatively inexpensive federal water at rates that excluded any interest on the federal government's investment in the irrigation component of its water resource projects. Water delivered at these rates is referred to as "subsidized water" because the lost interest is viewed as a subsidy to farmers. The differences between subsidized and full-cost water rates vary among water projects and districts and are often substantial. For example, in California's Westlands Water District, the subsidized rate is about 2.5 times less than the full-cost rate. Thus, a Westlands farmer using the average acre-feet of water annually to irrigate a 960-acre tract saves about $66,000 a year by using subsidized water.

Until 1982 federal reclamation law allowed water to be delivered at subsidized rates to owned land of up to 160 acres. The Bureau permitted married couples who owned a farm to irrigate up to 320 acres with subsidized water. Federal reclamation law was silent on leased acreage, and the Bureau provided federally subsidized water to large farms, some consisting of thousands of acres of leased land.

Recognizing the need to limit the number of both owned and leased acres the federal government helps a farmer irrigate, as well as the need to increase the size of an economically viable farm from the 160 acres designated in 1902, the Congress passed the Reclamation Reform Act of 1982. This act was expected to put an end to the Bureau's providing federally subsidized water to farms consisting of thousands of leased acres by limiting to 960 the maximum owned or leased acreage that an individual or legal entity, such as a partnership or corporation, can irrigate with subsidized water. Generally, the act provides that owned land above the limit cannot be irrigated with federal water, and farmers must pay the full cost for water delivered to leased land over the limit. The act exempts from its 960-acre limit land held for beneficiaries by a trustee in a fiduciary capacity as long as no single beneficiary's interest exceeds the law's ownership limits.

### THE DICHOTOMY BETWEEN CONGRESSIONAL EXPECTATIONS AND THE LANGUAGE OF THE RECLAMATION REFORM ACT OF 1982

On the basis of the legislative history of the Reclamation Reform Act of 1982, we believe that the Congress expected to stop the flow of federally subsidized water to owned and/or leased land over 960 acres being operated as one farm. For example, the conference report that accompanied the act stated that both the Senate and the House agreed to reduce the subsidy for "larger farming operations" and that the benefits of the new law should be available only if a water district agreed to amend its contract with the Bureau to reduce the subsidy for farming operations exceeding 960 acres.

However, the act does not specifically preclude multiple landholdings from individually qualifying for federally subsidized water while being operated collectively as one large farm. This occurs because the act (1) limits the amount of land the government will help a farmer irrigate rather than the size of a farm, (2) defines and uses the term "landholding" rather than "farm" or "farming operation" in establishing the acreage limit, and (3) is silent on whether multiple landholdings can be operated together as one farm while qualifying individually for federally subsidized water on up to 960 acres.

### EXAMPLES OF REORGANIZATIONS TO RECEIVE SUBSIDIZED WATER

For our October 1989 report, we selected eight farms that were larger than 960 acres before the 1982 act was fully implemented in order to determine whether farms have been reorganized to receive subsidized water on more than 960 acres. The eight farms are not necessarily representative of all large farms throughout the West; however, they do provide examples of how large farms have been reorganized through partnerships, corporations, and trusts.

We developed 11 indicators, any one or more of which would suggest that individual small landholdings are, in fact, parts of larger farms. Most of these indicators focus on arrangements between and among owners, lessees, and/or farm operators rather than on the individual landholdings. These indicators are not absolute determinants in themselves, but when they are applied to entire farming operations, they suggest that for all practical purposes these landholdings continue to be operated collectively as single large farms. Examples of these indicators include situations in which the same individuals make management decisions for multiple landholdings; a single farm management company operates multiple landholdings; or the farm manager or operator acknowledges that the small landholdings are being operated collectively as one farm. Attachment I lists the 11 indicators we developed.

In six of the eight cases we selected, the owners or lessees had reorganized large farms into multiple, smaller landholdings to be eligible to receive additional federal-

ly subsidized irrigation water from the Bureau. For example, in one case, a 12,345-acre cotton farm (roughly 20 square miles), operating under a single partnership, was reorganized into an elaborate network of 15 separate landholdings through 18 partnerships, 24 corporations, and 11 trusts. Five indicators that the 15 landholdings continued to be operated as one large farm were:

One partnership leased all 12,345 acres, and then subleased portions of it to other new partnerships.

The partners obtained one operating loan secured by the farms' crops and other assets.

Crop subsidy records indicate that the landholdings are interrelated.

Two farm management companies operate all IS landholdings.

Four individuals make the management decisions for nine of the IS landholdings.

Attachment II shows graphically how this farming operation was reorganized.

Another vivid example is the Westhaven Trust arrangement that enables a 23,238-acre farming operation to be irrigated with subsidized water. The J.G. Boswell Company, a large farm operator located in the Bureau's Central Valley Project, has taken advantage of the act's provision that exempts from the 960-acre limit land held for beneficiaries by a trustee in a fiduciary capacity, as long as no single beneficiary's interest exceeds the law's ownership limits. The act does not preclude multiple landholdings from being operated collectively under a trust as one farm while qualifying individually for federally subsidized water. Accordingly, the J.G. Boswell Company was able to reorganize land of the Boston Ranch Company, a wholly owned subsidiary of the Boswell Company, by selling the 23,238 acres to the Westhaven Trust in May 1989, with the landholdings attributed to each of 326 salaried employees. According to the Department of the Interior's Office of the Solicitor, because the landholdings attributed to the 326 trust beneficiaries range from 21 acres to 547 acres per beneficiary, the trust meets the act's requirement that no individual beneficiary's interest exceeds 960 acres. Thus each landholding was eligible to receive federally subsidized water.

Before the land was sold to the trust, the Boswell Company operated the 23,238 acres as one large farm. Five indicators suggest that after the farm was sold the entire acreage continues to be operated as one large farming operation:

One of the stated purposes of the trust is to operate the entire acreage as one farm under a farm management agreement. Officials from the Boswell Company and the Westhaven Trust acknowledge that the Westhaven Trust land is generally operated as one farm.

The 23,238 acres were purchased with one loan.

The trustee makes management decisions for the entire acreage.

The annual farming operation is financed with one operating loan.

The beneficiaries have an undivided interest in the land.[3]

Although the act does not preclude large farming operations organized as multiple landholdings under a trust from receiving federally subsidized water on the entire acreage, this situation is not consistent with what we believe the Congress was trying to accomplish in establishing the 960-acre limit. A graphic presentation of this case is shown in attachment III.

### FARM REORGANIZATIONS ARE REDUCING FEDERAL REVENUES

A consequence of these farm reorganizations and other arrangements is that the federal government is not collecting the revenues to which it would be entitled if multiple landholdings being operated together were considered collectively as one large farm or farming operation subject to the act's 960-acre limit. For four of the farms discussed in our October 1989 report, owners or lessees paid a total of about $1.3 million less in 1987 for federal water delivered by the Bureau than they would have paid if their respective multiple landholdings had been considered collectively as large farms subject to the act's acreage limit. Before the Westhaven Trust, the Boswell Company had paid full cost for the federal irrigation water delivered to the acres for the 18-month period ending in May 1989. When the trust bought the land, the entire acreage became eligible to receive federally subsidized water. Had the Westhaven Trust been subject to the acreage limitation, the trust would have been required to pay-about $2 million more per year for its federal water. Reduced revenues will likely continue to occur annually unless the 1982 act is amended.

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[3] No individual beneficiary owns a specific parcel of land. Rather, each beneficiary is allocated a percentage of the total acreage of the trust. This percentage is based on each beneficiary's salary from the J. G. Boswell Company relative to the total salaries of all 326 beneficiaries.

GAO'S VIEWS ON S. 2659

In May 1990, S. 2659 was introduced to amend the 1982 act. Some provisions are directed at closing the loophole that has allowed multiple landholdings to operate collectively as one large farm, while individually qualifying for federally subsidized water, by addressing one major indicator of a farm or farm operation. The bill is directed at the operator of a landholding, which the bill defines as an individual or entity that performs the greatest proportion of the decisionmaking or supervision for an agricultural enterprise on a given landholding or parcel of irrigation land at a given point of time.

We applied this definition of operator to the farms included in our October 1989 report and found that it was sometimes difficult to identify the individual or legal entity performing the greatest proportion of the decisionmaking or supervision. For example, four individuals made the management decisions for 9 of the 19 landholdings comprising the 12,345-acre cotton farm, and it would be difficult to ascertain which of the four was responsible for the greatest proportion of the decisionmaking. In another instance, a 4,638-acre farm was operated by a single farm management company owned by four members of a family. Unless the company qualified as a legal entity, it would be necessary to either (1) develop sufficient information about the company to show that one individual performs the greatest proportion of the decisionmaking or (2) divide the irrigated acreage equally among the four family members. This latter alternative would allow all 4,638 acres (with 2,553 equivalent acres) to continue to receive federally subsidized water even though the family continues to operate the four landholdings as one farm.

We agree that it is important to identify the operator of a farm or farming operation but believe that other indicators also should be applied to determine whether multiple landholdings continue to be operated as large farms. These indicators would include ownership, management, financing, or other factors individually or working together. Therefore, we believe that the act should be amended to apply the acreage limit to farms and farming operations as well as to individual landholdings. If our proposed legislative language becomes law, we would envision the Bureau applying indicators similar to the ones we developed to arrangements between and among owners, lessees, and/or farm operators.

In conclusion, we recognize that the Congress could not have envisioned all the different types of reorganizations and arrangements that have developed in the act's aftermath. In our view, farm reorganizations and other arrangements that allow multiple landholdings to continue to be operated as parts of large farms while individually qualifying for federally subsidized water are not consistent with what we believe the Congress was trying to accomplish in establishing the 960-acre limit. Effectively closing this loophole will require legislative language similar to that proposed in our October 1989 report.

Mr. Chairman, this concludes my statement. We would be pleased to respond to any questions you or the Subcommittee members may have.

[Attachment I]

LIST OF INDICATORS THAT COULD BE USED TO IDENTIFY MULTIPLE LANDHOLDINGS THAT ARE PARTS OF A LARGER FARM

—The individual landholdings or other farm assets are combined as collateral for loans.

—The principal owners or lessees of the individual landholdings agree to cover loan defaults of other principals.

—The farm manager or operator bears an economic risk associated with the production and sale of the crops.

—The same individuals make management decisions for multiple landholdings.

—The owners of the farm management company that operates the small landholdings are the same individuals who owned or leased the land before the reorganization occurred.

—The small landholdings are leased from the large farm that existed before the reorganization.

—The same individuals own or lease the small landholdings.

—A single farm management company operates multiple landholdings.

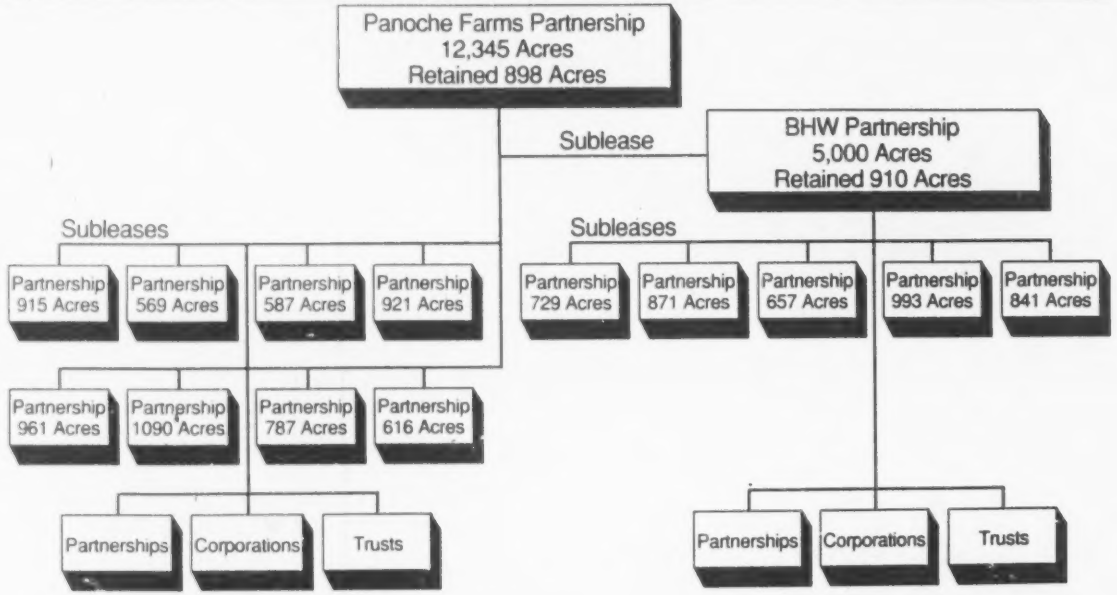
—Crop subsidy records indicate that the landholdings are interrelated.

—The small landholdings share equipment or labor, sometimes without charge.

—The farm manager or operator acknowledges that the small landholdings are being operated collectively as one farm.

ATACHMENT II

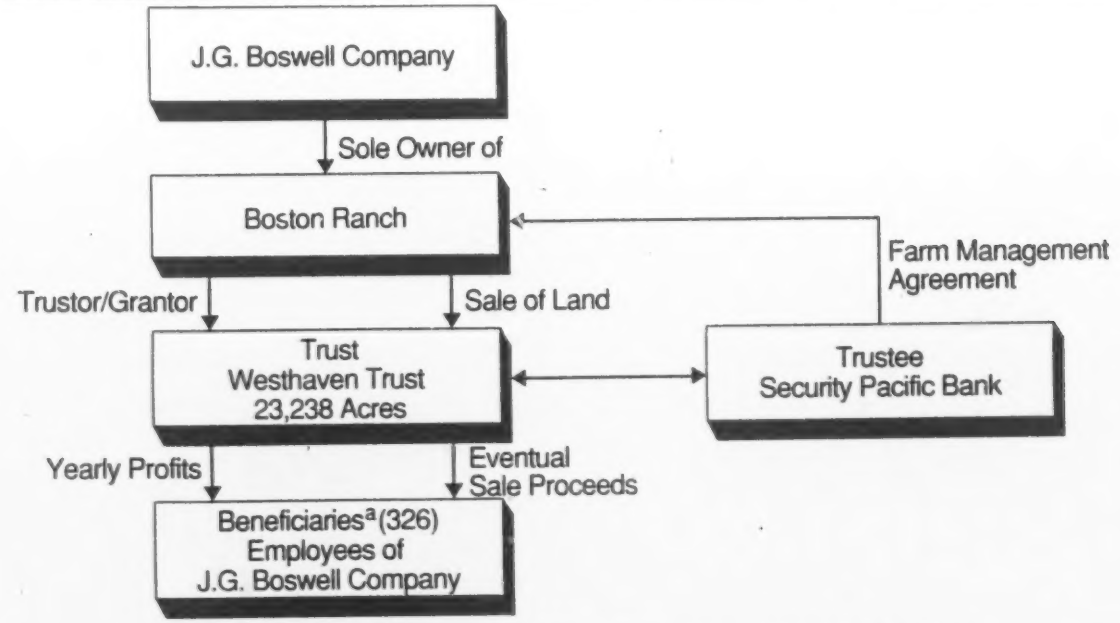
# GAO The Panoche Farm




Note: Each of the 15 landholdings received subsidized water.
Acres shown are actual acreage. Equivalent acreage for each landholding is less than 960 acres.

ATTACHMENT III

# GAO Boswell Farm




[a]Landholdings attributed to each beneficiary received subsidized water.

Senator BRADLEY. Senator McClure.

Senator MCCLURE. Mr. Duffus, frankly, I do not believe that either your October 1989 report or your testimony today deserve the amount of time it would take to thoroughly discredit them.

Suffice it to say that in 1979, S. 14 by Senator Church and a companion bill, H.R. 6520, attempted to limit farm size. They were not enacted. In 1982, the Reclamation Reform Act did not place a limit on farm size or operations other than the economic benefits test. And you admit that.

In 1987 in a hearing before this committee, Congressman Miller admitted that. In the 1987 statement of managers, the conferees reiterated that the RRA did not limit farm size. Congressmen Udall and Miller signed that report.

As Chairman of the Committee and sponsor of the 1982 law, I did not intend to limit farm size or operations. And I guess I could ask a rhetorical question—perhaps it is not.

Since none of the House or Senate leaders involved consider this to be a "loophole," to use your words, whose expectation was this?

Mr. DUFFUS. Senator McClure, as we pointed out in the statement, we obtained our basis from the legislative history review of the act, which included the conference report. The proponents of the bill were very clear in that the 960-acre limitation was to apply to farms and farming operations.

Senator MCCLURE. Could I ask you this question? Did you read the statement of the managers on the part of the Senate and the House on the conference on this legislation?

Mr. DUFFUS. We have.

Senator MCCLURE. And did you read this sentence, and I will quote from it, "It is important to state that the RRA did not limit the size of a farming operation, but rather limited the benefits of less than full cost irrigation water, e.g., 960 acres for a qualified recipient, 320 acres to certain limited recipients, and 160 acres for a prior law recipient."

Mr. FEINSTEIN. Senator McClure, if I may?

Senator MCCLURE. Yes, sir.

Mr. FEINSTEIN. We have never said that the law put a limit on the size of farm operations.

Senator MCCLURE. He just did. And the testimony says that. And the report says that.

Mr. FEINSTEIN. If I may?

Senator MCCLURE. Surely.

Mr. FEINSTEIN. What we said was that there was a limit as to the amount of subsidy that a large farming operation could get. In other words, let me, for example, quote Mr. Udall, who is the Chairman of the House Interior Committee and who was a prime member of the conference committee.

He said that you can have as large a farm as you wanted. The only thing was that the farm could not get more than 960 acres worth of subsidized water. So there is no limit on the size of the farm, there is a limit as to the size of the subsidy.

Senator MCCLURE. That is one statement, out of context. I could read you 100 others in the statements on the floor and in the committee deliberations and in the reports that are filed in the Congress that said quite the contrary.

I suppose there is no point in us debating that, because you have your opinion derived—from whatever, I do not know—except your own perception of what Congress expected.

Mr. Duffus, do you believe that a brother and sister who each own 960 acres of adjacent land should be able to farm those parcels as one unit, so long as they do not shift the economic benefit of the irrigation water?

Mr. DUFFUS. Senator McClure, I do not think it would serve any purpose for me to comment on a hypothetical situation—but we have developed 11 indicators which——

Senator MCCLURE. I have read those indicators. I would prefer you would answer the question as to whether or not you believe a brother and sister, each owning 960 acres, could operate those as one unit, so long as they did not shift the economic benefit of the irrigation water.

Mr. DUFFUS. Each situation would have to be determined on a case-by-case basis, and ultimately I think it would come down to whether or not those acres are being farmed as individual landholdings or are being farmed as one farming operation.

Senator MCCLURE. And you have 11 indicators?

If the example I just cited were changed to ten children, would that be okay?

Mr. DUFFUS. I do not think the numbers have that much to do with it.

Senator MCCLURE. So whether it is 100 or 10 or 2, it does not matter to you.

Mr. DUFFUS. I think one indicator simply is that. As I have mentioned, they are not determinants in themselves. They are simply indicators that there may be landholdings being operated collectively as a single farm or a farming operation. And that is a judgment. Once the facts are in, that is a judgment that the Bureau of Reclamation would have to make.

Senator MCCLURE. In your statement today in attachment 1, the first one of those list of indicators, the individual landholdings and other farm assets are combined as collateral for loans.

Now suppose the Boswell family, instead of selling this to the trust, which was buying on behalf of the beneficiaries, the employees—and I think you would agree that is the characterization of what happened with Boswell, is it not?

Mr. DUFFUS. I think that is correct, sir.

Senator MCCLURE. Now, if, instead of selling to the trust, they had sold to 100 Wall Street investors, would that have satisfied your requirement?

Mr. DUFFUS. Again, when we talk about assets being combined as collateral for loans, this in itself is not a definite conclusion. It does not say that it is a single, farming operation.

Senator MCCLURE. That by itself, so we should not take item number 1 as being an indication?

Mr. DUFFUS. It is an indicator, yes. If there was no other indication than that, then I would expect that the auditors would want to go further and satisfy themselves that this, in fact, was not a single family or single farming operation.

Senator MCCLURE. Then I would suggest—I want to understand what you are saying.

The list of indicators—do not take each one separately. If it meets some of these tests, it might—if some of these indications were present but not all of them, it can still qualify. Is that correct?

Mr. DUFFUS. I am saying we are not holding these out as strict criteria that you would have to meet or not meet. What we are saying is that in the work we did, we identified these as the primary indicators that the Bureau of Reclamation could use, and we used, in determining whether or not there was a single farming operation.

These were the things that once you considered them, once you looked behind them, if you saw this you would say okay, let us go further and see what the story is here.

Senator MCCLURE. All right, let me just suggest to you at this point that, indeed, Congress might have adopted this list of indicators or other similar ones.

We might well have enacted this, but we did not. We adopted the economic benefit question, which is a somewhat different test than some you have here, is that not correct?

Mr. DUFFUS. That is correct.

Senator MCCLURE. And I assume that you believe Congress has the capacity to set up whatever test they wish?

Mr. DUFFUS. No question.

Senator MCCLURE. And these lists of your suggestions are somewhat different than the list of suggestions contained in present law.

Mr. DUFFUS. That is right, but I would add that we are not recommending that these indicators become law or become part of any law. We are saying that in the general sense, you look at factors such as management, ownership, financing and so forth. And these are the types of indicators that the Bureau may or may not use in making those determinations.

Senator MCCLURE. Well, at least they appeal to you as a way in which to do it.

Mr. DUFFUS. They do.

Senator MCCLURE. And not necessarily what Congress has said—you do not hold these out as current law?

Mr. DUFFUS. No, we do not.

Senator MCCLURE. All right, thank you.

Does the Westhaven Trust violate any statutory provision of the RRA?

Mr. DUFFUS. No, sir.

Senator BRADLEY. Senator McClure, could we——

Senator MCCLURE. I have got about——

Senator BRADLEY. —quick ones?

Senator MCCLURE. —four.

Does the farm management agreement involved appear to be standard for the area in its terms and fees?

Mr. DUFFUS. That I do not know. I would have to defer to Mr. Senn, who did our fieldwork. I cannot answer that question.

Senator MCCLURE. Mr. Senn.

Mr. SENN. I believe that it does.

Senator MCCLURE. Are you aware that the trustee has relieved the Boswell Company from its management of a portion of the landholding?

Mr. DUFFUS. Again, I defer to Mr. Senn.

Mr. SENN. Could you repeat that, please?

Senator MCCLURE. Is that correct?

Mr. SENN. I did not hear what you said. Would you please repeat the question?

Senator MCCLURE. Are you aware that the trustee has relieved the Boswell Company from its management of a portion of the landholding?

Mr. SENN. Is that the acreage for tomatoes?

Senator MCCLURE. Yes, you must be aware of it because you identified it.

[Laughter.]

Senator MCCLURE. So your question was the answer, I take it.

Would you still have problems with the trust if Boswell did not manage the farming operation?

Mr. DUFFUS. I think we would, yes.

Senator MCCLURE. Why?

Mr. DUFFUS. Well because——

Senator MCCLURE. Because some of the other indicators are there?

Mr. DUFFUS. Well, I think because you had a 23,238 acre farm that was receiving subsidized water before the limitation was passed and—I am sorry—was paying full cost for water before the trust was formed, and then after the trust was formed, reorganized to receive subsidized water.

Senator MCCLURE. Let me ask one final question and I will submit the balance.

Is it not true that the Boswell Company could have sold this land to 100 Wall Street investors who, in turn, could have hired a single operator?

Mr. DUFFUS. I suppose it is possible.

Senator MCCLURE. That would have complied with the law, and if they had not used the land as collateral, it might have been past your list of indicators?

If they were wealthy enough, they did not have to pledge the land as collateral to purchase it?

Mr. DUFFUS. I do not understand the question.

Senator MCCLURE. Well, I will look at your list of indicators and say that there are 100 investors who are wealthy enough they do not have to depend upon using the land as collateral for a loan. They either use something else as collateral for the loan, or they just pay cash for it.

If 100 Wall Street investors had bought the ranch and they had hired a single management company, that would not have violated the law. Is that correct?

Mr. DUFFUS. As the current arrangement does not violate the law, as we made very clear, I think we would still have a problem with it, because you had a reorganization of a large-acre farm——

Senator MCCLURE. I am talking about the hypothetical, where Boswell, with 23,000 acres sells to 100 different owners, 230 acres a

piece. And they hire a single farm manager to farm their 230 acres, each of them.

Mr. DUFFUS. I think it would still be a problem because it is a single unit with multiple landholdings being operated as a single farm.

Senator MCCLURE. You do not like joint management, then.

Mr. DUFFUS. It has nothing to do with what I personally like or dislike.

Senator BRADLEY. Let me suggest that that is a perfect question for you to answer in writing, as well as to all of Senator McClure's other questions. And I appreciate the Senator yielding at this point so we could move on.

Let me thank you very much for your testimony. Let us move on to the next panel which consists of William W. Howard, executive vice-president of the National Wildlife Federation; Susan Lederman, president of the League of Women Voters; Jill Lancelot, Director of Congressional Affairs, National Taxpayers Union; and Alan Keyes, president of Citizens Against Government Waste.

Now if I could say to the panel, my apologies for the delay. You understand our predicament. We are up against the wall here. So if each of you could limit your testimony to 5 minutes, I would appreciate that very much and I know the committee would as well. Your full statements will be in the record in full.

And let us begin with Mr. Howard.

## STATEMENT OF WILLIAM W. HOWARD, EXECUTIVE VICE PRESIDENT, NATIONAL WILDLIFE FEDERATION

Mr. HOWARD. I am Bill Howard. I am the executive vice president of the National Wildlife Federation. We are the Nation's largest conservation education organization with 5.8 million members and supporters with nationwide affiliates in 51 States and Territories, including the 17 reclamation States.

I am here today to express the Federation's strong support for the reforms of the Reclamation Program contained in S. 2659 and H.R. 2567.

In 1902 Congress set the Nation on a course of developing large irrigation projects for Western farmers. Over the years, subsidies for irrigation development were increased in an attempt—as has been described here today—to encourage the settlement of the western half of the country.

But I must say the price for encouraging farming in the arid West has been extremely high. Hundreds of thousands of acres of riparian lands and thousands of river miles today are buried beneath dams and reservoirs. Wetlands have been lost as rivers are depleted and de-watered. Irrigation runoff, laden with pesticides, fertilizers, salts and selenium has poisoned rivers and wetlands and made it unfit for consumption by humans or wildlife.

I would like to talk for just a minute, especially about the fish and wildlife impacts. In California, the Central Valley Project has destroyed salmon fisheries, it has poisoned the Kesterson National Wildlife Refuge to the point where deformities are commonly found among waterfowl nesting there.

It has contributed to salt-water intrusion into the Sacramento/San Joaquin delta and destroyed hundreds of thousands of wetland acres essential to the birds that migrate along the Pacific Flyway.

So a very heavy price has been paid in an area where, again, as has been pointed out today, abuses of the reclamation program have also been the most flagrant.

So what do our members express as far as deep concerns about these kind of things? I think there are two or three points that really deserve attention and that this bill addresses.

First of all, we are an organization that believes firmly in the wise use definition of conservation, the Teddy Roosevelt definition, if you will, which includes eliminating waste in natural resource use, wherever it is possible.

No one can say that there is at present any incentive to eliminate waste in the way the reclamation programs are currently run. It always troubles our members when public values are sacrificed to what is largely individual gain, not entirely, but to a large extent individual gain.

And finally, we are very concerned that there has been no real mitigation, in most cases, to the necessary losses that have resulted as a result of this national policy.

So because of these factors, our members have repeatedly urged reform of the Federal water programs. And because of the Bureau of Reclamation's history of environmental destruction and resistance to reform, the National Wildlife Federation Membership has passed a resolution asking that Congress consider the orderly phase-out of the Bureau programs. So, I guess from our point of view, this is a step in the right direction, but short of where we would like to be.

The reforms that are contained in the legislation before this subcommittee today are essential to bring the Bureau program into line with contemporary needs and values.

[The prepared statement of Mr. Howard follows:]

PREPARED STATEMENT OF WILLIAM W. HOWARD, EXECUTIVE VICE PRESIDENT, NATIONAL WILDLIFE FEDERATION

Mr. Chairman and members of the subcommittee, my name is Bill Howard and I am the Executive Vice President of the National Wildlife Federation (NWF). I am here today to express the Federation's strong support for the reforms of the Bureau of Reclamation program represented by the legislation before this subcommittee today. I would also like to urge the subcommittee to amend H.R. 2567 to protect the fisheries of the Shoshone River below Buffalo Bill Dam. NWF is the nation's largest conservation-education organization, with over 5.8 million members and supporters nationwide and affiliate organizations in 51 states and territories, including each of the 17 Reclamation states.

In 1902 Congress set the nation on a course of developing large irrigation projects for Western farmers. Over the years, the program first authorized in the Reclamation Act of 1902 was modified and expanded. Subsidies for irrigation development were increased in an attempt to encourage further the settlement of the western half of the country. These subsidies were limited to farms of 160 acres—the family farm—because the Reclamation program was intended to give incentives for new homesteaders to settle the West. Unfortunately, that acreage limit was abused and ignored by the Bureau of Reclamation and its customers.

Over the course of this century, the dozens of projects of the Reclamation program have led to the development of irrigated farming in areas where farms might not otherwise exist. But the price for encouraging farming in the arid West has been very high. Hundreds of thousands of acres of riparian lands along thousands of stream miles have been buried beneath dams and reservoirs. More wetlands and

other riparian habitat have been lost as rivers are depleted and dewatered, leaving insufficient flow to support downstream riparian wetlands and estuaries. Irrigation runoff laden with pesticides, fertilizers, salts, and selenium has poisoned rivers and wetlands with water unfit for consumption by humans or wildlife. Resources for the Future reports that an estimated 25-35 percent of the irrigated lands in the West has some type of salinity problem, and the problems are worsening.

In California's Central Valley, considered by some a showplace of the success of irrigated agriculture, the Central Valley Project has destroyed salmon fisheries, poisoned the Kesterson National Wildlife Refuge to the point where grotesque deformities are common among waterfowl nesting there, contributed to saltwater intrusion into the Sacramento-San Joaquin Delta, and destroyed thousands of wetland acres essential to the birds that migrate along the Pacific Flyway. This price has been paid in an area where it happens that the abuses of the Reclamation program have also been most flagrant.

Our membership has expressed deep concerns regarding the loss of rivers and wetlands to water project development. They have repeatedly urged reform of federal water programs to reduce water subsidies and encourage water conservation. The Bureau of Reclamation's history of environmental destruction and its failure to enforce meaningful irrigation limits upon its customers recently led the National Wildlife Federation membership to pass a resolution requesting that the Congress consider the orderly phase-out of the Bureau's programs. The reforms contained in the legislation before the subcommittee today are essential to bring the Bureau program in line with contemporary needs and values. Without such reforms, the Bureau's programs will remain on their present collision course with environmental and political realities. NWF will oppose any new project authorizations for the Bureau until these acreage limitation and surplus crops reforms are adopted.

The reforms of the Reclamation program proposed in these bills will not prevent anyone from receiving federally supplied water. They will charge "full cost" for Reclamation water sold to those who operate large farms and those who grow surplus crops. Charging "full cost" as calculated under the Reclamation Reform Act does not completely eliminate the subsidy incorporated in Reclamation water pricing, but the increased prices will create incentives for water conservation, retaining more water in rivers and wetlands, and decreasing poisonous irrigation runoff. Savings in irrigation water could also alleviate growing municipal demands for water, and thereby minimize the construction of expensive and environmentally damaging municipal water projects. The purpose of assisting family farmers will be maintained, while the reforms will restore some rationality to U.S. water policy.

### THE RECLAMATION REFORM ACT OF 1982 MUST BE AMENDED TO PREVENT LARGE GROWERS FROM CIRCUMVENTING LIMITS ON WATER SUBSIDIES

Historically, many farmers who received subsidized irrigation water were not content to limit themselves to 160-acre farms. The Bureau condoned the practice of farmers leasing thousands of additional acres to be irrigated with federally subsidized water. Such farmers became wealthy at the expense of the federal taxpayer and the environment.

In 1976 a federal District Court ordered that the abuses be stopped. Leased land would thenceforth be subject to the original congressional intent that subsidized water be limited to 160-acre farms. Farmers responded by arguing that conditions had changed since 1902, and larger farms were required to make irrigated farming economical. The Reclamation Reform Act of 1982 acknowledged these historical changes by increasing the acreage limit to 960 acres. But it also reinforced the original intent of the Reclamation program to firmly limit subsidies, albeit at a higher level.

After obtaining an increase in the acreage limit, some large farming interests were still not content to limit their irrigation subsidies to 960 acres. They set out to see what they could do to avoid the limits set in the law. At first, the Bureau published proposed acreage limitation regulations that would have enforced the 960-acre limit on irrigation subsidies. The large growers complained, so the Bureau gutted the regulations. The final regulations adopted in 1987 bore little resemblance to the proposed rules. They created new loopholes for huge agribusinesses to reorganize their farms on paper, yet continue farming them as a single operation, and continue to receive subsidized water.

The reason for the changes in the regulations was explained by the Commissioner of the Bureau of Reclamation in a speech he gave to the National Water Resources Association the same day the final rules were published:

> The first set of rules attempted to capture the purposes of [the Reclamation Reform Act]. We listened and we studied extensively what did Congress and the Senate intend. What was the congressional intent in passing this law? . . .
>
> That set of rules pretty well carried out what the Congressmen and the Senators said they were doing with the Act. Our new set of rules that we've put into place are cut based upon an entirely different principle. And the different principle came as a result of our putting the November rules out on the street and coming out here in the West and sitting through fifteen agonizing days of workshops and hearings wherein you people for the most part did that which, thank God, we are allowed to do in this country, you sat back on your heels and you bellyached about what the government in Washington, D.C. was trying to do for you. . . .
>
> [O]ur Solicitor came along and said, let's take a look at what we're empowered to do. And he did a little bit of studying, he went back to Section 224 of the Act itself and he identified in there that the law said that the Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of federal reclamation law. . . . And I would suggest to you that the purposes and the provisions are distinctly two different things, and that gave us the comfort and the ease that we needed.

Remarks of Commissioner C. Dale Duvall to National Water Resources Association, "Reclamation Reform Act: the New Rules" (Reno, Nevada April 13, 1987).

A complete transcript of Commissioner Duvall's remarks, verified by the Bureau, is appended to this written statement. It is absolutely clear from these remarks that when the growers complained, the Bureau developed final regulations under the Reclamation Reform Act by attempting to meet the letter of the law without meeting the intent of Congress. There is no suggestion that the Bureau found congressional intent ambiguous; rather, the Bureau set out to avoid that intent. It is now time for this Congress to state that the irrigation subsidy limit of 960 acres is meant to be enforced, and that the Bureau and the growers shall be limited by the intent of Congress.

### PROVISIONS CONTAINED IN H.R. 2567 AND S. 2659 ELIMINATE MANY ABUSES OF THE RECLAMATION REFORM ACT

The two bills now before this subcommittee set out to close the loopholes created by the Bureau under the Reclamation Reform Act (RRA). Although H.R. 2567 and S. 2659 take different approaches to their common goal of enforcing the acreage limits, they accomplish the same ends. I will discuss a few minor differences and preferences that we have regarding the details of an irrigation subsidy reform bill; however, NWF would support final passage of the language of either bill.

*1. Minor Children*

The first provision of S. 2659 requires that lands held by minor children be included within the calculation of acreage held or operated by a single individual. There is no equivalent provision in H.R. 2567. NWF strongly supports inclusion of this provision in the final bill. As originally passed, section 202(4) of the RRA required that lands held by dependents be included in the acreage limits, but the Bureau's regulations and practices have allowed this requirement to be circumvented. Large landowners place lands in trusts for their minor children, then use the income from those trusts to establish a false independence for those children, yet the farm is still operated as a single unit. S. 2659 would establish that all minor children are to be treated as dependents of their parents, and eliminate the manipulations that allows infants to be treated as farmers for purposes of water subsidies.

*2. Landholdings*

H.R. 2567 and S. 2659 take different approaches to eliminating abuses of farm operating agreements. H.R. 2567 creates a new section 202(3) of the RRA, defining a "farm" or "farm operation" to include within the 960-acre limit all lands farmed together in a single operation, regardless of technical relationships among individual landholdings. S. 2659 modifies the definition of a "landholding" to include indirect holdings, and creates a new definition of the term operator so that lands operated together will also be covered by the acreage limit. Either approach, together with its conforming amendments, would express congressional intent to include all lands farmed together within the acreage limit of the RRA. Either would eliminate some growers current practice of linking indirect ownerships under farm management agreements to form huge farms receiving federally-subsidized water. NWF

would support either bill's language to eliminate loopholes created under the RRA, and to strengthen the reporting requirements for farm management arrangements.

*3. Nonresident Aliens*

The two bills use identical language to restrict subsidized water deliveries to U.S. citizens and resident aliens only. The Bureau's decision to prohibit subsidized water deliveries to nonresident aliens, but to allow such deliveries to corporations wholly owned by such persons, has made a mockery of the restriction originally established in section 202(9) of the RRA. Nonresident aliens receiving water subsidies can avoid the limits of the law simply by paying a $50 filing fee to set up a wholly-owned domestic corporation. This abuse should be halted. Charging foreign-owned corporations full cost for Reclamation water will reduce the subsidy to these growers, with anticipated savings in water use, as intended by the 1982 Act.

*4. Trusts*

The approaches taken by H.R. 2567 and S. 2659 toward eliminating abuses of the trust provision of the RRA are slightly different. Section 214(a) of the RRA was originally intended to prevent corporate and banking trustees who held land in trust for numerous unrelated trust beneficiaries from being subject to the acreage limit. This provision has been stretched to the breaking point, however, by huge farm owners who have divided their businesses up into numerous trusts, and then continued to farm the land as a single unit. Either bill would serve the purpose of restricting the section 214(a) exception to neutral trustees. NWF prefers the language proposed in S. 2659, but urges that the retroactivity provision of H.R. 2567 be added. This provision allows 180 days for trusts to be reorganized or divested, but makes clear that trusts already approved by the Secretary will become subject to the new requirements.

*5. Regulations*

The two bills also take different approaches to amending section 224(c) of the RRA, which allows the Secretary to promulgate regulations enforcing the Act. NWF supports the language suggested in S. 2659, but also suggests that the terms "intent, purposes and" be inserted before the word "provisions" where it first appears in section 224(c). This amendment has been made necessary by the Bureau's insistence that it may somehow avoid carrying out the intent of Congress while implementing the provisions of the Act. We also suggest that a new section be added to the end of S. 2659, immediately voiding the existing regulations that were adopted in this defiant manner, and requiring that the Bureau enforce the amendments on an interim basis while new regulations are being adopted.

*6. Nonexcess Land*

S. 2659 includes a minor amendment to section 224(e) of the RRA to assure that nonexcess land converted into excess land does not revert to a former owner through foreclosure. There is no similar provision in the House bill. NWF supports the provision in S. 2659. It prevents potential manipulations of section 224 that would allow an owner of excess land to obtain the benefit of increased land value resulting from previously-acquired irrigation subsidies when selling the land.

*7. Interest Rate*

S. 2659 contains another minor amendment that is not addressed in the House bill, to alter the interest rate charged on underpayments for irrigation water. The interest rate in section 224(i) of the RRA would be modified to conform to the interest rate provided at section 202(3)(C) of the RRA. This change is appropriate, since the interest rate calculated in section 202(3)(C) is based on long-term U.S. obligations. This interest rate properly reflects the long-term investment undertaken by the U.S. Treasury in constructing Reclamation projects. Interest on underpayments should reflect the cost of that investment.

SUMMARY

Both the House and the Senate language represent diligent attempts to eliminate abuses of the Reclamation program. Due to the numerous kinds of abuses and the many provisions of the RRA, it is not surprising that the two bills vary with respect to the details that they address. By adopting the best features of both bills, this subcommittee can accomplish much toward limiting water subsidies and reducing water waste in the Reclamation program. We would suggest, however, that certain additional provisions are necessary to address other abuses of the RRA reforms.

RECLAMATION LAW REGARDING IRRIGATION WATER CONSERVATION MUST BE STRENGTHENED WITH BOTH PENALTIES AND INCENTIVES TO STIMULATE COMPLIANCE WITH THE INTENT OF THE RRA

Section 210 of the Reclamation Reform Act, which required irrigation districts receiving federally subsidized water to prepare water conservation plans, has achieved no measurable effects. The 1982 Act relied on the Bureau to ensure that the conservation plans contained "definite goals," "appropriate measures," and "time schedules" for compliance. Instead, the Bureau has placed water conservation at the very lowest level of priority during the past eight years. The Bureau's guidelines to the districts on preparing conservation plans appear designed to confuse matters by blurring the distinction between ends and means in water conservation.

NWF audited a cross section of conservation plans that had been approved by the Bureau. Out of 43 plans examined, our review turned up only three that could conceivably have met the basic requirements of the RRA. The remaining plans in our sample exhibit varying states of noncompliance, ranging from earnest but flawed efforts to contemptuous off-the-cuff statements as short as a business letter. By accepting plans that patently fail to meet the criteria in the law, the Bureau is failing to enforce the law. The growers for the most part have not taken the water conservation requirements of the 1982 Act seriously. No water is saved by the preparation and filing of meaningless water conservation plans.

Water conservation can work on Reclamation lands. A sampling of the more ambitious water conservation programs by Reclamation customers, such as the programs developed by Imperial Irrigation District, Roza Irrigation District, and Westlands Water District, reveals that the most meaningful conservation incentives have come to these districts from outside sources: an offer to buy conserved water, diversions by more senior water rights holders, and state water quality enforcement, for these three respectively. Demonstration programs have resulted in beneficial reductions in irrigation water use without significant losses in net farm income. In addition, the Broadview and Pacheco Water Districts in the CVP are experimenting with increasing block-rate schedules to reduce demand. The Pacheco district estimates that almost 1/2 acre-foot less water (more than 15%) was applied per irrigated acre in 1988 than in 1987 for the same crops.

Several factors work against applying these strategies Westwide to achieve beneficial reductions of Reclamation water: the very low price of subsidized Reclamation water, the "use it or lose it" requirements in prior appropriation doctrine of state water law, and the lack of water markets where gains from conservation could be cashed in for profit. The result has been the lowest common denominator, poor compliance, and little effect.

It has been suggested that abuses in the Reclamation program should be corrected administratively, without legislation. In our judgment this won't work. The Bureau's rule to implement water conservation under section 210 of the RRA lacks even the skeletal components of a basic rule: (a) minimum criteria for an acceptable conservation plan; (b) timetables for plan development and implementation; (c) examples of acceptable conservation actions; (d) sanctions for noncompliance; (e) permission for owners to profit from sales of conserved water; and (f) provisions for plan enforcement by the Secretary, aggrieved persons, and state and local agencies.

If the Bureau took water conservation seriously, it would raise prices and decrease demand through aggressive cost recovery policies, identify possible uses for conserved water, develop conjunctive use plans for surface and groundwater, and begin a water bank to facilitate water marketing. The Bureau would also provide technical assistance regarding irrigation efficiencies to its customers.

Regrettably, Congress must write the rules for this recalcitrant agency. Section 210 of the RRA should be amended to require that each water conservation plan include (A) a water conservation goal of at least five percent within 5 years; (B) an inventory of water conservation measures, containing (i) projects and measures to improve the efficiency of the storage, conveyance, distribution, and use of water in a manner that contributes to conservation; (ii) the estimated economic and financial costs of each project or measure; (iii) the estimated water yield of each project or measure; and (iv) the environmental effects of each project or measure; (C) an economic and environmental comparison of each identified project or measure; (D) a schedule of implementation for the coming five years; and (E) an assessment of the performance of previously implemented projects, if any. The law should provide that any district that does not meet its conservation goals according to agreed-upon time schedules must pay full cost for water deliveries until its water conservation plans come into compliance.

In addition, the water conservation provision of the RRA should direct that each district's water conservation plan identify a range of possible uses of saved water and the selection of preferred uses. The CVP Fish and Wildlife Mitigation Act, S. 2658, identifies several important uses to which conserved water can be put.

### PROVISIONS OF RECLAMATION LAW REQUIRING RECOVERY OF A PORTION OF CAPITAL COSTS UNDER WATER SERVICE CONTRACTS SHOULD BE STRENGTHENED

For many years, contract prices for water sold under long-term water service contracts (also called "9(e) contracts," because they are authorized by section 9(e) of the Reclamation Project Act of 1939) were set too low to keep up with the increasing cost of operations and maintenance. Although required by law to recover "an appropriate share" of capital costs as well as annual operation and maintenance costs, the prices charged, frozen by contract, were too low to prevent the accrual of an increasing deficit. Section 208 of the RRA required that water service contracts charge a price at least sufficient to pay the full cost of operation and maintenance. In addition, these new rates were to be adjusted annually to cover any increases in operation and maintenance costs.

In yet another misinterpretation of law that benefits its customers, the Bureau has chosen not to recover any capital costs under most new water service contracts. The RRA did not amend the requirement that an appropriate share of capital costs be recovered. It also did not require any contract amendment that would eliminate the portion of each contract price allocated to capital recovery. But the Bureau's regulations eliminate all capital cost recovery when current operation and maintenance costs equal or exceed the old contract price. Thus, most districts that have water service contracts are still paying nothing toward recovery of the U.S. government's capital investment in their projects.

Section 208 of the RRA should be amended to require amortization of capital costs under all new and amended water service contracts. The share of capital costs recovered must be greater than zero. Such a provision would be consistent with current law, but would prevent the Bureau from again misinterpreting the law to benefit its customers.

### THE PROVISIONS OF H.R. 2567 REDUCING WATER SUBSIDIES FOR THE PRODUCTION OF SURPLUS CROPS ARE NECESSARY TO SUPPLEMENT THE RECLAMATION REFORMS OF S. 2659

NWF strongly supports the provisions in Title XVI of H.R. 2567 relating to the cost of reclamation water used to grow surplus crops. The provision, which was offered as an amendment by Rep. Gejdenson during floor consideration, was overwhelmingly supported by the House of Representatives. With the exception of the final clause, which we believe should be dropped, we view this legislation as a critically important step to reconcile the conflicting goals of increasing crop production with subsidized Bureau of Reclamation water and stabilizing agricultural income through the Department of Agriculture's income and price support programs. The adoption of Title XVI will lower the Federal deficit, firm up the prices of American farm products, and protect the environment.

The title provides that, in the future, when Reclamation water contracts are renewed or amended, water must be sold at the full-cost rate established under the RRA if the water is used to grow commodity program crops for which an acreage reduction program is in effect. Thus, the provision would remove a portion of the Reclamation water subsidy when water is used to grow surplus crops. The provision is not abrupt. It is phased in over the next couple of decades as contracts expire and are renewed. It will be simple to administer because full-cost water rates are calculated annually by the Secretary of the Interior for each Reclamation project and the Bureau monitors which crops are being grown with water it delivers. Finally, it provides incentives for irrigation districts to come forward with early contract renewals to reduce the cost of water in the future, thus increasing revenues to the Treasury in the near term on some contracts.

### THE SURPLUS CROP PROVISION ADDRESSES A COSTLY INCONSISTENCY IN OUR NATION'S FARM POLICY

Since 1950, the American farmer's success in increasing production through investment, skill, and technology has exceeded the capacity to market and price commodities to achieve satisfactory incomes. Highly subsidized water delivered through the Bureau of Reclamation's dams and diversions has contributed to this growth in capacity and production. In general, Reclamation's multi-purpose programs focus on

regional development rather than on agricultural policy. The USDA, in contrast, focuses on stabilizing farm income.

Each year the Department of Agriculture spends billions of dollars on set-aside payments to reduce the production of program crops while the Bureau of Reclamation boosts crop production by the delivery of subsidized water. Set-aside payments to Reclamation customers vary each year, but in 1986 the Department of Agriculture estimated that it paid $730 million in crop-support payments to owners and operators of federally-irrigated farms. About 40% of the lands that receive subsidized water from the Bureau are used to grow program crops. Each year these farms receive $200 million worth of subsidized water for the production of these same crops.

Lands supplied with Reclamation water produce 4.4 percent of the total value of program crops nationwide. Although the total percentage of feed grains grown on Bureau land is relatively small, the total value of rice and cotton grown is significant. Reclamation lands produce about 18 percent of the total value of U.S. production of cotton and about 12 percent of the total value of rice. According to the Economic Research Service, in 1986 the Department of Agriculture made price support payments of $108 million for rice and $106 million for cotton to beneficiaries of Bureau water. The USDA estimated that a 2 percent reduction in cotton output would have resulted in a 7.1 percent increase in cotton prices in 1982.

If the surplus crop provision is enacted, farmers now growing commodity program crops would face a choice when their contracts for Bureau water are renewed. They can reduce or eliminate the acreage planted in program crops—this would further the goals of federal farm programs to bring supply and demand into improved balance. Or they can continue growing commodity program crops with higher-priced irrigation water. This choice would increase incentives to initiate water conservation measures and efficiency improvements to reduce water costs. Either way, the public benefits—through lower farm program costs from reduced commodity crop production and firmer domestic crop prices, or through more efficient water use, freeing water to meet other purposes.

The conflicting nature of these two programs unnecessarily wastes taxpayer's dollars, promotes inefficient use of scarce water and related land resources, and degrades the environment. In an era of looming budget deficits and growing environmental concerns, the nation must improve the policies that govern the allocation of our fiscal and natural resources. The provision of subsidized water—water that is essential to economic growth and critical to fish and wildlife resources—for the production of surplus crops is not the most efficient use of our resources.

### ENACTING THE SURPLUS CROP PROVISION WILL REDUCE THE POLITICAL PRESSURE FOR COSTLY NEW FEDERAL IRRIGATION PROJECTS

Requiring full-cost pricing for water used to grow surplus crops will make new Reclamation projects less attractive in cases where the water will be delivered to commodity program crops. In the past the Department of Agriculture has voiced its opposition to new Reclamation projects. The Department noted that it is working toward

> retiring land through the Conservation Reserve Program, cutting excess production, and reducing federal subsidies. . . . As a matter of national public policy, the federal government should not authorize and fund projects which bring new land into agricultural production at a time when it is burdened by excess crop production.

Adopting Title XVI would reduce the pressure for programs that will bring new land into production, by reducing the subsidy for new projects that would be used to grow surplus crops.

### THE DRAINAGE AND RUNOFF FROM IRRIGATION OF SURPLUS CROPS CAN BE DEVASTATING TO HUMAN HEALTH AND THE ENVIRONMENT

Much of the environmental damage resulting from the Reclamation program is caused directly by irrigation of commodity program crops. The high concentration of selenium in agricultural runoff from cotton fields in California's Westlands Water District has led to death and deformity of thousands of waterfowl at Kesterson National Wildlife Refuge. Millions of dollars have been spent to study and restore the refuge. In the San Joaquin Valley and the Lower Colorado River Basin, Reclamation lands planted to surplus crops intensify salinity problems for downstream users.

The additional irrigation applications stimulated by the double incentives of subsidized irrigation water and program payments has led to increasingly contaminated irrigation runoff. The California State Water Resources Control Board found that

high concentrations of herbicides in agricultural runoff from Reclamation-served lands planted to rice were acutely toxic to micro-organisms at the base of the food chain in the Sacramento River. The San Joaquin River faces similar problems from residues that drain off Reclamation-served lands planted to cotton. Both these rivers flow into the beleaguered San Francisco Bay-Delta system. The striped bass population, an indicator of the health of the Bay and Delta, is at its lowest recorded level. Studies by researchers at the University of California have found links between rice herbicides and massive fish mortality.

The City of Sacramento has filed a lawsuit against the California State Water Resources Control Board because of the high concentrations of herbicides unique to rice production found in its drinking water supply. Contra Costa County, dependent on water from the Sacramento-San Joaquin Delta that suffers from irrigation drainage, has approved a $200-million bond measure to upgrade its water quality. Several cities including San Jose and Los Angeles depend on drinking water from these increasingly salty river systems.

THE FINAL CLAUSE OF THE SURPLUS CROPS PROVISION, WHICH LIMITS THE APPLICABILITY OF THE AMENDMENTS TO ONLY FARMERS PARTICIPATING IN THE ACREAGE REDUCTION PROGRAMS, SHOULD BE ELIMINATED

NWF strongly objects to the final clause included in the surplus crops provision that limits its applicability to only farmers participating in commodity programs:

> (4) This subsection shall not apply to—
>
> * * * * *
>
> (D) water delivered to any agricultural producer who is not a participant in any acreage reduction program in effect under the Agricultural Act of 1949.

This provision was added during debate on the House floor. It would allow beneficiaries of Reclamation projects to choose between water subsidies or commodity program subsidies. This will encourage large farm operations to continue to grow surplus crops with highly subsidized water by simply dropping out of the government acreage reduction and crop subsidy programs. By giving large farmers an incentive to leave the commodity programs, it could result in expanded production of surplus crops in many instances, thus undercutting the farm programs and the competitive position of smaller farmers. By shielding certain producers of surplus crops from full cost pricing of irrigation water, this language would also reduce incentives for investments in water conservation.

Americans are often willing to accept small environmental losses for the production of goods and services. However, it is an insult to ask the American public to accept environmental damage and misallocation of resources to produce crops that the Department of Agriculture is asking farmers not to grow. Mr. Chairman and members of the subcommittee, on behalf of the National Wildlife Federation, I urge you to support the surplus crops Title of H.R. 2567, with the modification we have recommended, in order to resolve these inconsistencies in our nation's agricultural policy. Such legislation will serve the interests of the taxpayer, the environment, and the agricultural constituencies you represent.

H.R. 2567 SHOULD BE AMENDED TO ASSURE PROTECTION OF FISHERIES IN THE SHOSHONE RIVER BELOW BUFFALO BILL DAM

The National Wildlife Federation and our state affiliate, the Wyoming Wildlife Federation, strongly recommend that the Buffalo Bill Dam legislation be modified to resolve certain critical fishery management issues regarding the Buffalo Bill Dam modification project. Title I of H.R. 2567 authorizes an increase in spending authority of approximately $12,000,000 for the modification project's completion. It also authorizes modifications in the Bureau of Reclamation's plans for the development of power generation facilities. Since last November when the Senate first considered and passed Buffalo Bill Dam legislation, controversy has arisen regarding the lack of guaranteed flows on the Shoshone River downstream of Buffalo Bill Dam for the protection of fish and wildlife. Because this issue arose after the Senate completed action on S. 1121 last November, it was not a subject of consideration by the Senate Energy and Natural Resources Committee. Since then, the Fish and Wildlife Service has stopped providing fish for stocking the Shoshone River below Buffalo Bill Dam due to uncertainty over the availability of flows.

*History of Fishery Concerns*

The Shoshone River below Buffalo Bill Dam supports a class one trout fishery that has experienced periodic fish kills and outmigrations because of low water releases and resultant degradation of water quality. For more than fifteen years, state and federal fish and wildlife agencies have advocated releases of water to assure flows needed for fish below Buffalo Bill Dam. Throughout the history of planning for the Buffalo Bill Enlargement project, the fishery agencies have recommended stabilizing and enhancing this outstanding fishery with proper flow maintenance. However, the Bureau of Reclamation and the State of Wyoming have failed to take the necessary steps to require appropriate studies and to implement the recommendations. These issues remain unresolved.

From the earliest stages of project planning, the fishery agencies' recommendations were ignored. This history is demonstrated through the project's environmental documents. The U.S. Fish and Wildlife Service recommended in the Fish and Wildlife Coordination Act Report for the Buffalo Bill Dam Modification, Shoshone Project, completed on November 20, 1974:

> It is recommended that: (1) The Feasibility Report specifically recommend the Congress require minimum releases at all times of 100 cfs and 250 cfs below Buffalo Bill Dam and Heart Mountain Powerplant, respectively, except when safety inspection and maintenance of project facilities may require lesser releases. In the latter situation, timing and duration of the periods of release below established minimums should be coordinated with officials of the Wyoming Game and Fish Commission and the U.S. Fish and Wildlife Service. . . .

Comments by the Wyoming Game and Fish Department attached to the 1974 report recommended:

> Once again we would like to re-emphasize the importance of adequate guaranteed flows in all stretches of the river. Our major concern is that no water appears to be specifically allocated to provide fishery or water quality benefits. The report is replete with reference to these benefits, both aesthetic and monetary, which are to be derived from more desirable flows in the Shoshone River. We contend that these benefits are solely based on the assumption that water (M&I) will be taken at the lowest point of downstream diversion. . . .

In 1981, the Bureau of Reclamation filed a Final Environmental Impact Statement (FEIS) on the modification project. At that time, the proposal was to locate a 20 MW powerplant at the existing Shoshone Powerplant site, approximately 500 feet from the toe of Buffalo Bill Dam. The FEIS observed:

> Under the Wyoming water law and the existing physical limitation in the Shoshone River Basin pertaining to flow and storage, neither minimum nor flushing flows can be guaranteed. To be firmly committed (guaranteed) the State would have to recognize minimum flows as a beneficial use, and storage from modification of Buffalo Bill Reservoir would have to be committed for that purpose . . .

The 1981 FEIS also reiterated the point in response to the comments of the Wyoming Game and Fish Department: "minimum stream flows cannot be guaranteed under Wyoming water laws because instream flow is not recognized as a beneficial use." Furthermore, the FEIS recognized that the expanded reservoir would cause the loss of roughly three miles of high quality trout stream habitat on the North and South Forks of the Shoshone River that was largely accessible to the public in Buffalo Bill State Park. No mitigation was proposed for these losses, and none was required when Congress authorized the Buffalo Bill modification project in 1982.

*New Proposal*

The Bureau now proposes that Congress authorize an expansion in power generation facilities that could result in a substantial reduction of flows and habitat, particularly in the one-mile reach below the dam. In March of 1984, the Bureau made a Finding of No Significant Impact (FONSI) under the National Environmental Policy Act on these proposed design changes (a 3 MW generator at the existing Shoshone Powerplant site, an 18 MW generator a mile downstream from the dam, and a 4.5 MW in-line generator further downstream in the Shoshone Canyon Conduit). The FONSI says:

> With the proposed action, the minimum flow of 100 [cubic feet per second (cfs)] will be released *whenever it is available* from the Shoshone Powerplant either through the proposed 3 MW generator or through an automatic bypass, if necessary. However, moving 18 of the 21 MW generating capacity downstream will reduce the flows by some 50 percent during the

> summer irrigation season . . . between the dam and the new discharge about 1 mile downstream.

(Emphasis added.) The 1984 FONSI also identified added problems associated with increases in hydrogen sulfide concentrations during low flows, and potential for reduced fishery migration into Shoshone Canyon because of changes in flows and water diversion plans.

We understand that during the period when the FONSI was being prepared, the U.S. Fish and Wildlife Service staff was told to halt its preparation of an updated Fish and Wildlife Coordination Act report for the revisions in the project, and that it would be "handled in Washington." This report was never completed.

While the Bureau now seeks new authorization for design changes and additional spending authority, the proposed minimum flows have not been guaranteed and remain subservient to irrigation, municipal and industrial (M&I) water, and power generation demands. It would be poor public policy to allow this new authorization for expanded power development to proceed without resolving how instream flows will be managed to protect and enhance fisheries below the Buffalo Bill Dam. While the Bureau of Reclamation has applied for the necessary water rights for the Shoshone project's claimed irrigation and M&I needs, neither the State nor the Bureau has applied for a right to meet the instream flow needs, even though the opportunity has existed for nearly five years.

In our discussions with both federal and state fishery personnel, it has become clear that the 100 cfs minimum instream flow, which has been included in past recommendations and which has not been guaranteed, is not sufficient to meet the instream flow needs of the trout fishery below Buffalo Bill Dam. While the State and the Bureau propose a major modification in the proposed power generation facilities, they have failed to require preparation of a Fish and Wildlife Coordination Act report to assure "equal consideration" of protection and enhancement of fishery resources. The assurances requested by the U.S. Fish and Wildlife Service and the Game and Fish Department were never incorporated in the Bureau's plan, nor has the Bureau applied for the water rights to provide the necessary fishery instream flows.

Given the continuing failure of the Bureau of Reclamation and the State of Wyoming to resolve the downstream fishery protection issues at Buffalo Bill Dam, NWF believes an amendment to the legislation is necessary to secure the flow guarantees reasonably sought by state and federal fish and wildlife agencies. We recommend that Title I of H.R. 2567 be supplemented to amend section 106(a) of the 1982 authorization as follows:

> "Provided further, the sums authorized for appropriation in this paragraph shall not be authorized after one year from the date of enactment of this paragraph, unless the Secretary finds that the State of Wyoming, in cooperation with the U.S. Fish and Wildlife Service, has completed a study and established an appropriate schedule of downstream release requirements from the Buffalo Bill Dam for protection of fisheries, riparian habitat, and recreational uses in the Shoshone River. Pending completion of the study and the downstream release schedule, the Secretary shall operate the Buffalo Bill Dam and Reservoir so as to maintain a minimum instream flow of 100 cubic feet per second on the reach of the Shoshone River between Shoshone Powerplant and Heart Mountain Powerplant, and 250 cubic feet per second on the Shoshone River immediately below Heart Mountain Powerplant."

This amendment would require that after one year, the further availability of project funding would be contingent on a finding by the Secretary of the Interior that the State of Wyoming has completed a study in cooperation with the Fish and Wildlife Service and established an appropriate downstream release schedule to protect fish and wildlife below the Buffalo Bill Dam. In the interim, to avoid further fishery losses, the amendment directs the Secretary to maintain the same minimum flows that were recommended in the 1974 Fish and Wildlife Coordination Act Report for the original Buffalo Bill Dam Enlargement project.

Without this amendment, we believe it is unlikely that the public benefits of a fully protected Shoshone River trout fishery will materialize in a timely fashion. In this instance, there is plenty of water available to meet the instream flow requirements as well as irrigation and M&I demands. Also, the adoption of the amendment need not impede the project's construction.

We understand that the Wyoming Game and Fish Department has recently completed the necessary field studies for determination of appropriate instream flows. This action by the agency is encouraging considering the years when such studies were interminably stalled. The language we propose for H.R. 2567 will allow Congress to act decisively to resolve this issue, and the State should now be adequately

prepared to respond promptly. We strongly urge the Committee's adoption of this or a similar amendment to assure protection of a blue ribbon class trout fishery on the Shoshone River.

CONCLUSION

NWF thanks the Subcommittee and Chairman Bradley in particular for scheduling a prompt hearing on these needed reforms of the Reclamation program. We urge that the reforms to enforce the acreage limitations and eliminate the subsidy for surplus crop production be strengthened and adopted by this committee. We thank you for the opportunity to present our views here today.

[Attachment.]

NATIONAL WATER RESOURCES ASSOCIATION PRESENTS RECLAMATION REFORM ACT: THE NEW RULES

RECORDED LIVE APRIL 13, 1987, BALLY'S GRAND, RENO, NEVADA

(Introduction by George Proctor, President)

. . . And it's a pleasure also to have the Bureau of Reclamation with us today to present this seminar on the rules and regulations that are just off the press . . .

[It is] a pleasure to present to you Dale Duvall, Commissioner of the Bureau of Reclamation. Dale

Dale Duvall: Thanks, George. It's a pleasure for me to be here today.

We have gone through, in this last year, the agony of the November seventh [proposed] rules and before we start talking about the new rules, I'd like to just make a couple of—three observations about the November rules. The November rules were something that had been commenced before I became Commissioner and they were commenced by—under operating guidelines and policy guidance that was created by a Secretary of Interior who was two Secretaries of Interior ago. The marching orders that the staff had to do the early drafting on that set of rules started under Jim Watt and under a different Assistant Secretary. I believe there were three or—there were three different secretaries and four different assistant secretaries that had policy input into that set of rules.

Now, I have to tell you and be very frank and candid with you, I had some policy input into it too. That set of rules was put on the street with the blessing of the office of Management and Budget, which always seems to be necessary on everything in Washington for some reason, and the rules as they were exposed had some things in there that were tradeoffs that were designed to try to placate the purpose—the opposite purposes, opposite objectives—that people find when they read what is a much briefer and a much smaller thing called the [Reclamation Reform] Act itself or the statute. The statute—and so we're dealing, if we can accept that at the outset, the intent and the dialogue and the conference records, the hearing records, the discussion on the floor of the House and the Senate when this law was passed, intent and the claims that were made about what this law was going to do as opposed to what this law actually, on interpretation, enables people to do, is vastly different, and I can't over-emphasize that too much.

The first set of rules attempted to capture the purposes of that law. We listened to and we studied extensively what did Congress and the Senate intend. What was the congressional intent in passing this law? And the congressional intent, when you listen to the dialogue, was much different than you can get with an interpretation of the strict statutory, constitutional interpretation of what the law itself says. That explains—by defining that we used somewhat the purposes of the Act to come up with the November rules, I think that's as close to an apology that I'm going to give to you.

That set of rules pretty well carried out what the Congressmen and the Senators said they were doing with the Act. Our new set of rules that we've put into place are cut based upon an entirely different principle. And the different principle came as a result of our putting the November rules out on the street and coming out here in the West and sitting through fifteen agonizing days of workshops and hearings wherein you people for the most part did that which, thank God, we are allowed to do in this country, you sat back on your heels and you bellyached about what the government in Washington, D.C. was trying to do for you. And thank God our system gives us the opportunity to do that in this nation that we're fortunate enough to live in. You people expressed your concerns and those concerns were heard. Other people who do not agree with you expressed their concerns and those

concerns were heard and so what we had at the end of the comment period was a pretty good crystallization of the fact that this thing is not very clear. And we had to go back and say, what do we do now that the people in the comment period that we've just endured and the public hearing process that we've just endured are getting diametrically opposite interpretations of what this law says?

Fortunately, our Solicitor came along and said, let's take a look at what we are empowered to do. And he did a little bit of studying, he went back to Section 224 of the Act itself and he identified in there that the law said that the Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of federal reclamation law. The Secretary was authorized to promulgate rules only to carry out the "provisions" of this Act. The Solicitor then went and looked at another stack of laws that he had on his desk where there was authority to promulgate rules and he looked at all those others and each of the other ones that he happened to have on his desk empowered to Secretary to carry out—to promulgate rules to carry out the "purposes" of the Act. And I would suggest to you that the purposes and the provisions are distinctly two different things, and that gave us the comfort and the ease that we needed. It gave us the access to go in and say, there are some things that we can look at in the hearing testimony and the comments that came in and say, we can't—they may have, they may have perfectly logical comments, but we are not obligated to address those in the final rules because they are going beyond the provisions of the Act. And so a lot of clarification, a lot of clarity came to us in the tasks that we were about when we got to that point.

The next thing we had to do, then, was to ask ourselves, how are we, even with that—that decision—which was probably the first decision that we made in breaking through this logjam of information that we had in our hands, the next decision that we had to make was how are we going to address this in an orderly process? And we sat down and came up with a number of objectives that we felt were good for—good public policy objectives that you people would agree with and that we would agree with and something that we could use to regularize the process of reviewing the comments.

I'd like to just take a moment today to go through those. The first objective was to carry out the provisions of the Act, as the law specifically requires. That decision had pretty much been made for us when the Solicitor clarified the differences between promulgating rules that carry out the provisions as opposed to the purposes of the Act. The second was to provide a stable and predictable climate for private individuals who must make economic decisions based on this law—a stable and predictable climate for decisionmaking. The next one was to create a process that is both administratively practical and not unduly burdensome. The third, to respect existing contracts. And finally, to prevent circumvention of the provisions of the Act.

And that sounds like a pretty simple little set of rules but, much like the Constitution of the United States, it stood the test. It's like the debits and credits of double-entry accounting. Whoever started that back about six thousand years ago perhaps had no comprehension at all of the kind of challenges that were going to be made to that, and yet the principle itself is the thing that's made it work throughout history.

That's everything I'm going to give you in the way of background. I'd like to now go in and discuss what the major issues of the rules themselves contain. And I'm talking now for the most part about the, the final rules that I hope are being boxed up in Washington, D.C. and sent en masse to every water district in this country and to all of our regional offices and that sort of thing. I think we asked for eleven hundred, or twelve hundred copies from the Federal Register for our first run of this set of rules, and if they didn't have any breakdowns in their presses, they should have had their presses running all last night, and they should have been picked up sometime around 9:30 this morning in Washington with the intent of getting them broken down into packages and shipped out to where you and I have to implement them. I'd like to just go through, if I may, each of the key issues and then I think probably I'll turn it over to Dave Houston who's had an—played a significant role in drafting the final rules, and have him walk us through the rule package that, that you all have and we'll just go through it rule by rule by rule.

Senator BRADLEY. Thank you very much, Mr. Howard.
Ms. Lederman, welcome to the subcommittee.

## STATEMENT OF SUSAN S. LEDERMAN, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Ms. LEDERMAN. Thank you.

I am president of the League of Women Voters of the United States and I am speaking on behalf of League members in the Western States who, like other citizens of those States, have received many benefits and occasional burdens of the reclamation program.

I am also speaking for league members throughout the Nation who are concerned because reclamation programs involve vital issues of public policy and effective government.

The League supports legislation to eliminate abuse and close loopholes in the Reclamation Reform Act of 1982. Specifically, we support action to ensure compliance with the acreage limitations of the act, to reduce water subsidies that are uneconomic and environmentally destructive.

Let me state clearly that the League applauds the original purposes of the Reclamation Act of 1902. But now, nearly 90 years later, something has gone wrong. Large agribusiness corporations receive federally subsidized water in violation, we believe, of congressional intent. Excessive subsidies that exist are not only economically wasteful, but they also exacerbate environmental problems, especially ground water degradation.

Confidence in the Bureau of Reclamation and Federal policies it administers have been called into question. What went wrong?

Certainly times have changed. Economic realities and environmental concerns have changed. Unfortunately, the Bureau's policies have failed to reflect these changes. A prime example of this failure is the inappropriate implementation of the Reclamation Reform Act of 1982. In this act, Congress raised the acreage limitation of the original Reclamation Act of 1902 so that subsidized water could go to family farms up to 960 acres instead of 160 acres.

The reform act addressed the public policy's concern resulting from the fact that the original 160-acre limitation had rarely been enforced. The act was an effort to help stabilize local farming communities. It was not congressionally intended to promote unwarranted subsidies to large, corporate farms.

The Bureau's policies, however, continued to allow use of subsidized water for farm management agreements over 960 acres. The Bureau's regulation, based on narrow, limited interpretation of the 1982 act's language seemed to trigger actions by several large corporate farms to circumvent the intent of Congress.

The General Accounting Office report on water subsidies explains how the intent of the law has been evaded. We agree with the conclusions. We agree with and endorse the report's recommendation that Congress amend the Reclamation Reform Act of 1982 to apply the act's acreage limits to farms and farming operations as well as to individual landholdings.

Passage of such legislation is essential to plug the loopholes allowed by the Bureau's interpretation of the law. Passage will also help preserve the integrity of the Federal reclamation program and restore the Bureau's credibility, which was tarnished by the implementing legislation.

The League sees a future for the Bureau that is different, and for reclamation policy. A different vision will be required if public trust is to be regained.

We urge the Bureau to revitalize its programs, priorities and regulations so that its actions respond to the 1990's and the needs for the years ahead. The Bureau could exercise a crucial, beneficial role in the future—one very different from its traditional approach to water development—a role that treats water as a limited resource, rather than a commodity; one in which the Bureau pursues water management practices that preserve a safe and sound environment; one that takes responsibility for protection of public trust values, such as fish and wildlife.

We call this approach a stewardship of natural resources. We are sure the Bureau's policies can promote stewardship without sacrificing its leadership role in agriculture. In fact, we think greater stewardship can help sustain the economic viability of agriculture.

Water is a limited, often scarce resource throughout most of the Western United States. This is a fundamental fact on which reclamation policy and the Bureau's programs must be based.

The League has concluded that water conservation must be promoted with a goal of minimizing consumption. In California and other Western States, water conservation has become a necessity and should be a priority for all levels and agencies of government with responsibility over water.

We think governmental policy should promote stewardship at all levels of government. The Federal role should be one of providing leadership, guidance and financial assistance where necessary, to enhance resource management.

We also believe that beneficiaries should pay the cost of water development and delivery, as much as it is feasible. While the League recognizes that some subsidy may be necessary, we wish to discourage dependence on water subsidies in the future. The League comes to these conclusions after many years of interest in Federal water policy.

For example, the League of Women Voters in California has undertaken five studies, dating back to 1958, on water policy in that State. The California League wrote the bureau in 1987 expressing concerns about implementation of the acreage limitation and urging greater water conservation of resources.

In order to achieve water conservation, subsidies must be cut. In order to protect the environment, subsidies must be cut. It is well documented that environmental problems have plagued the Bureau of Reclamation's programs in recent years.

Subsidized rates can promote the irrigation of marginal, agricultural lands and can promote over-leaching where agricultural drainage problems exist. Degradation of ground water is the result.

The availability of below-cost water can lead to over use and to wasteful irrigation practices. Excessive consumption means that less is available for conservation of fish and wildlife, preservation of wetlands or protection of water quality.

Senator BRADLEY. Ms. Lederman——

Ms. LEDERMAN. Thank you very much.

[The prepared statement of Ms. Lederman follows:]

PREPARED STATEMENT OF SUSAN S. LEDERMAN, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

I am Susan Lederman, President of the League of Women Voters of the United States. I am speaking today on behalf of League members in the western United States who, like other citizens of those states, have received the many benefits and the occasional burdens of reclamation programs. I am also speaking for League members throughout the nation who are concerned because reclamation programs involve vital issues of public policy and effective government. As a professor at Kean College of New Jersey, I have taught public administration for many years.

The League supports legislation to eliminate abuses and close loopholes in the Reclamation Reform Act of 1982. Specifically, we support action to ensure compliance with the acreage limitations of the Act and to reduce water subsidies that are uneconomic and environmentally destructive.

Let me state clearly that the League applauds the original purposes of the Reclamation Act of 1902. Appropriate for that time, the Act helped open up, develop and transform the western United States. The Bureau of Reclamation had a major influence on economic growth and the vitality of development in the West by providing subsidized water to family farms.

But now, nearly 90 years later, something has gone wrong. Large agribusiness corporations receive federally subsidized water in violation, we believe, of congressional intent. Excessive subsidies exist that are not only economically wasteful but also exacerbate environmental problems, especially groundwater degradation. Confidence in the Bureau of Reclamation and the federal policies it administers has been called into question.

What went wrong? Certainly times have changed. Economic realities and environmental concerns have changed. Unfortunately, the Bureau's policies have failed to reflect these changes. A prime example of this failure is the inappropriate implementation of the Reclamation Reform Act of 1982.

In the Reclamation Reform Act of 1982, Congress raised the acreage limitation in the original Reclamation Act of 1902 so that subsidized water could go to family farms of up to 960 acres instead of 160 acres. The Reform Act addressed the public's concerns resulting from the fact that the original 160 acre limitation had rarely been enforced. The Act was an effort to help stabilize local farming communities; it was not congressional intent to promote unwarranted subsidies to large corporate farms.

The Bureau's policies, however, continue to allow use of subsidized water for farm management arrangements over 960 acres. The Bureau's regulations, based on a narrow, limited interpretation of the 1982 Act's language, seemed to trigger actions by several large corporate farms to circumvent the intent of Congress, which meant to limit the size of farms eligible for federally subsidized water.

The General Accounting Office report on water subsidies explains how the law has be evaded. We agree with its conclusions. We agree with and endorse the report's recommendation that Congress "amend the Reclamation Reform Act of 1982 to apply the act's acreage limit to farms and farming operations as well as to individual landholdings."

Passage of such legislation is essential to plug the loophole allowed by the Bureau's interpretation of the law. Passage will also help preserve the integrity of the federal reclamation program and restore the Bureau's credibility, which was tarnished by the implementing regulations.

The *Sacramento Bee* pointed to the Bureau's credibility problem in an editorial of June 21, 1990. The *Bee* stated that these corporate abuses will have to be stopped "if the reclamation program is ever to regain the level of public trust it needs to survive."

The League sees a different future for the Bureau and for reclamation policy. A different vision will be required if public trust is to be regained.

We urge the Bureau to revitalize its programs, priorities and regulations so that its actions respond to the 1990s and the needs of the years ahead. The Bureau could exercise a crucial, beneficial role in the future, one very different from its traditional approach to water development; a role that treats water as a limited resource rather than as a commodity; one in which the Bureau pursues water management practices that preserve a safe and sound environment; one that takes responsibility for protection of public trust values such as fish and wildlife. We call this approach a stewardship of natural resources. We are sure the Bureau's policies can promote stewardship without sacrificing its leadership role in agriculture. In fact, we think greater stewardship can help sustain the economic viability of agriculture.

Water is a limited, often scarce resource throughout most of the western United States. This is the fundamental fact on which reclamation policy and the Bureau's programs must be based.

The League has concluded that water conservation must be promoted, with the goal of minimizing consumption. In California and other western states, water conservation has become a necessity and should be a priority for all levels and agencies of government with responsibilities over water. We think governmental policies should promote stewardship at all levels of government. The federal role should be one of providing leadership, guidance and financial assistance where necessary to enhance resource management. We also believe that beneficiaries should pay the costs of water development and delivery as much as is feasible. While the League recognizes that some subsides may be necessary, we wish to discourage dependence on water subsidies in the future.

The League comes to these conclusions after many years of interest in federal water policy. For example, the League of Women Voters of California has undertaken five studies, dating back to 1958, on water policy in that state. The California League wrote to the Bureau in 1987 expressing concern about implementation of the acreage limitation and urging greater conservation of water resources.

In order to achieve water conservation, subsidies must be cut. In order to protect the environment, subsidies must be cut.

It is well documented that environmental problems have plagued the Bureau of Reclamation's programs in recent years. Subsidized rates can promote the irrigation of marginal agricultural lands and can promote over-leaching where agricultural drainage problems exists. Degradation of groundwater is the result.

The availability of below-cost water can lead to overuse and to wasteful irrigation practices. Excessive consumption of water means that less is available for conservation of fish and wildlife, preservation of wetlands or protection of water quality.

The League believes that through pricing policies, through greater recognition of the true cost of water, water conservation and environmental protection can be achieved. We encourage governmental pricing policies that reflect real development and delivery costs.

Congress should enact legislation to reduce subsidies that undermine water conservation efforts and degrade the environment. Such legislation, combined with action to ensure compliance with the acreage limitations of the Reclamation Reform Act of 1982, will be major steps forward in developing stewardship as an essential element of reclamation policy.

The League of Women Voters of California has some additional thoughts related to the operations of the Central Valley Project. They are attached to this statement. I ask the Subcommittee to consider them, as appropriate. In addition, I have attached to this statement the California League's comments to the Bureau on the regulations implementing the 960 acre limitation.

[Attachments.]

ADDITIONAL COMMENTS ON THE CENTRAL VALLEY PROJECT (CVP)

Districts of the CVP must pay annually for all water under contract whether it is used or not, apparently to assure a steady revenue for the Bureau's operation and maintenance costs. Innovative systems should be promoted, such as banking or having a reserve for excess water, in order to allow a carry-over of supplies from one year to another.

Water delivery from the CVP should be available on demand rather than on fixed irrigation schedules. A study of the costs involved should be undertaken and an implementation plan developed.

New institutional arrangements should encourage drainage management by districts and should include greater efficiencies in water use or the sharing of excess supplies, if this can be done in an environmentally sound manner and within the confines of the 1982 Reclamation Reform Act.

The San Joaquin Valley Drainage Program has completed its studies and will disband in October 1990. Another program for implementing drainage recomnendations should be undertaken. Fish and wildlife agencies need to continue to serve on an oversight committee.

Renewal of contracts for the CVP should be postponed until the State Water Resources Control Board completes its major hearings on the San Francisco Bay/Delta Estuary in 1992. Contract renewals should be subject to environmental review under the National Environmental Policy Act (NEPA) and reflect more of a commitment to public trust values than the Bureau's actions have in the past.

Contract terms should require, as conditions of delivery, an updating of water conservation plans and implementation according to specific standards. Implementation of existing plans now is not required.

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LEAGUE OF WOMEN VOTERS OF CALIFORNIA,
*Sacramento, CA, May 10, 1987.*

C. DALE DUVALL,
*Commissioner, Bureau of Reclamation, Department of the Interior, Washington, DC.*

Re: Guidelines: Reclamation Reform Act of 1982

DEAR COMMISSIONER DUVALL: The League of Women Voters of California was dismayed to learn of the reversal of proposed rules issues last November by the Department of Interior on acreage limitation guidelines under the Reclamation Reform Act of 1982. The Department's action is a direct violation, in our opinion, of the Congressional intent of the Reform Act. We urge the Bureau to re-consider and to re-adopt the guidelines as originally proposed.

The LWVC is concerned because of the heavily subsidized water from the federal Central Valley Project which is delivered mainly to large farms in California's Central Valley. Nationwide only about five hundred farms exist with acreage over 960 acres the limit for receiving some subsidy set by the Reform Act of 1982. Of these all but 100 farms are in California and some are large agribusiness corporations. They will greatly benefit from your new guidelines and can continue to receive subsidized water in spite of their size. However, federal reclamation projects were never meant to assist the giant landowner. Instead the Reclamation Act was authorized to encourage the small family homesteader to settle what was then a barren West. The Reform Act of 1982 addressed the public's concerns resulting from the fact that the original acre limitation of 160 acres had rarely been enforced. Here in California, we watched the progress of the Reform Act of 1982 with great interest because of its potential effect on water use in California and on what we perceived as economic inequities.

The League believes that water resources should be protected and not wasted, that consumption should be minimized and that beneficiaries should pay the costs of water development and delivery as much as is feasible. While the League recognizes that some subsidies may be necessary, we wish to discourage dependence on water subsidies in the future. We urge a strong federal role in setting policies and procedures.

The LWVC also believes that the proposed new guidelines, which will allow continued subsidized water use for farm management arrangements over 960 acres, will have the opposite result from League policies. The guidelines will encourage subsidization and inefficient water use rather than conservation. We are concerned that past CVP and Bureau of Reclamation policies have promoted irrigation without regard to groundwater overdrafting, wise use of a resource and the need to preserve our limited resource for future generations. Your new guidelines could be a step backwards from much needed reform.

We thank you for this opportunity to express our views. Again, we urge you to rescind your present guidelines and adopt those proposed last November. Such an action on your part would more truly reflect the spirit of reform in reclamation practices.

Sincerely yours,

CAROL FEDERIGHI,
*LWVC President.*

Senator BRADLEY. We thank you very much.

Mr. Keyes.

## STATEMENT OF ALAN L. KEYES, PRESIDENT, CITIZENS AGAINST GOVERNMENT WASTE

Mr. KEYES. Thank you, Mr. Chairman.

In the interest of time I think I would like to ask if my written statement——

Senator BRADLEY. Your full statement will be in the record.

Mr. KEYES. And I will just say I represent Citizens Against Government Waste, which is a 350,000-member nationwide organiza-

tion that takes a keen interest in how the Federal Government, in particular, uses or abuses tax dollars.

We are clearly living in a time when that is an issue of great concern. All kinds of talk is in the air, as you very well know, about the difficulties that we are going to face, financially, about deficits, and taxes. And I think there a lot of folks around the country who are worried about it.

In that spirit, we would want to commend you for S. 2659, and an effort that is not only important in and of itself for trying to correct an abuse which we believe is contrary to the intentions of the Congress, but which also exemplifies the kind of spirit that we also believe has to be the spirit of the United States Congress at this time.

There is a tendency, we believe, in Washington for folks to look at the large budgets and the large figures and think that a million here, a million there, it does not matter. But we all know that both really, and over time, those millions add up to billions. The loopholes and the leaks result in a tremendous burden being placed on the taxpayer.

And we think that if folks are even going to be hinting at the possibility of tax increases, they should be making strenuous efforts to make sure that every piece of congressional legislation has closed the loopholes and plugged the leaks and is achieving the intention of Congress in the most effective way.

We think that what is at stake here, is really fairly simple. Congress either intended or it did not intend for the 960-acre limit to apply. It either had reasons for that or it did not. If it did have good reason for it, then it should be concerned if that limitation is being circumvented.

It is quite obvious that the circumvention of the limitation is going to benefit some people. And if folks come in and say that those benefits will be lost, I say all well and good. If the Congress does not agree with the view that those benefits should be limited to landholdings that are 960 acres or less, then change the limitation.

But to tolerate an abuse of the program by various assorted legal means and machinations we think is contrary to the spirit and intention both of the law and of real concern for agriculture in the United States.

We think that the Reclamation Reform Act of 1982 was enacted with a view to dealing with some of the problems that already existed in this area. It was done with good intentions and hoped for good effects.

Some of those effects not having been realized, we think that it is timely now to take another look along the lines that you have proposed and to try to make sure that we are targeting aid where it is needed.

And that is the main principle of our support of this amendment. We think that it is fine, and all well and good to be doing things for the farmers of this country—especially for those who need help. But we do not think that with budget squeezes on, this is a time when we should be allowing loopholes to support big agribusiness, wealthy, and rich farmers at the expense of a program that can put those dollars where they are needed.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Keyes follows:]

PREPARED STATEMENT OF ALAN L. KEYES, PRESIDENT, CITIZENS AGAINST GOVERNMENT WASTE

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to present the position of the Citizens Against Government Waste (CAGW) on S. 2659 and supplemental federal reclamation law to eliminate abuses of the reclamation program. CAGW is a 350,000-member nonprofit, bipartisan organization dedicated to educating the American people about the waste of their tax dollars.

I am here today to talk about an abuse in the reclamation program that is being carried out by a relatively small number of farmers and their shrewd lawyers, costing taxpayers millions of dollars every year. I wish to commend Senator Bradley for recognizing the abuse and holding this hearing to address the issue.

The problem involves the Reclamation Reform Act of 1982, which was enacted in recognition of the need to revise both owned and leased acres the federal government would help a farmer irrigate. The Act increased the size of an economically viable farm from the earlier 1902 acreage limit of 160 to 960 acres and limited the number of acreage eligible to receive federal water subsidies to 960-acres.

The main problem lies within the language of the statute. Congress intended to provide federally subsidized water to a maximum of 960 acres of owned and/or leased land being operated collectively as one farm. Unfortunately, Congress failed to define and use the term "farm" or "farming operation" in establishing the acreage limit. Instead Congress used the term "landholding". This small difference in language has created a serious loophole in the law with the result being that Congressional intent is not being met.

The General Accounting Office has reported that farmers have found a loophole in the Reclamation Act and reorganized large farms, of as much as 12,345 acres into multiple, smaller landholdings. GAO concluded that these smaller landholdings, which are usually within the 960-acre limit, are nothing but a front for larger farming operations. Farmers are able to reorganize their large farms through a combination of partnerships, corporations, and trusts and receive irrigation subsidies for their land. This is obviously not the intent of the law.

The result of the 960-acre limit abuse has been a substantial reduction in revenues which the Federal Government would have received if these multiple landholdings had been considered collectively, as large farms subject to the 960-acre limit. GAO cited 8 cases as blatant examples of the acreage limit abuse, and estimated that $1.3 million in revenue was lost as a result of owners and lessees not paying for subsidies for land which exceeded the acreage limit. GAO found that under the current program revenues will continue to be reduced every year until reform is made in the system. While the number of farmers abusing the subsidy privilege is rather small at this point, as to more and more farmers use this loophole, losses to the Treasury will increase.

Congress must be clear in the laws that it mandates. It must see that all loopholes are closed and that their expectations are being met. When Congress writes laws for the benefit of the people of this country while shrewd lawyers and others are able to find loopholes and ways to circumvent these laws something must be done to ensure that the abuse and waste is stopped. More importantly, something must be done to ensure that taxpayers are not paying for ambiguities that exist within the law every time they pay taxes. In short, a law that is not crystal clear is worse than no law at all.

As discussions of tax increases permeate the air, every effort must be made to eliminate fraud, waste, and abuse in government programs. Taxpayers cannot be expected to foot the bill for government inefficiency.

The Senate bill, S. 2659, would re-define the term "landholding" by deleting the phrase "owned or operated under a lease," and replacing it with the phrase "owned, leased, or operated." It would also clarify the term "farm operator" as the individual or entity that performs the greatest proportion of the decisionmaking for the agriculture enterprise on a given landholding or parcel of irrigation land at a given point in time. This change in the Reclamation Act would prevent large farmers from receiving multiple subsidies.

On June 14th of this year, the House passed a similar reform measure which was offered by Representative George Miller (D-CA) by a vote of 316-97. We urge the Subcommittee to follow the lead of the House. By doing so, Congress can close loopholes to the law and ensure that our tax dollars are being spent in a most prudent and efficient manner.

Senator BRADLEY. Thank you very much, Mr. Keyes.
Ms. Lancelot.

## STATEMENT OF JILL LANCELOT, DIRECTOR, CONGRESSIONAL AFFAIRS, NATIONAL TAXPAYERS UNION

Ms. LANCELOT. Well, that is a hard act to follow. I would like to say ditto to everything that Mr. Keyes said.

I am from the National Taxpayers Union. We too, are concerned with our budget deficits and our $3 trillion debt. And we have been long involved in this area of trying to reform the reclamation program.

I, too, will try to quickly summarize the statement—our statement. We, as I say, have had a long—the taxpayer has had a long, vested interest in the history of the reclamation program in the United States.

The reclamation act created a cheap supply of Federal irrigation water to supply family farms of not more than 160 acres. Yet we think that farming has far surpassed the initial need set out in that original law. And we, in short, think that the reclamation program has outlived its original purpose. And providing water for irrigation is no longer needed as a catalyst to move West and farm. And indeed, it is questionable whether to continue subsidizing farmers at the taxpayers' expense is indeed the proper use of taxpayer money.

And certainly, it is wrong to support growers that receive federally subsidized water for very large landholdings which is what we are seeing happening today.

In 1982, we all know, the Reclamation Reform Act increased the acreage allotment from 160 acres to 960 acres. At the time we questioned that. And we thought at the time that the—we opposed that acreage allotment, the increase, because we thought that subsidies had outlived its usefulness.

However, we see today that the Bureau of Reclamation has failed to enforce even that 960-acre limitation. And those loopholes have allowed large-scale farmers to reorganize their vast landholdings and circumvent the acreage limitation or to continue to receive below-cost, federally subsidized water to thousands of acres of land.

The abuses that have stemmed from those loopholes have been well documented. GAO mentioned several of them this afternoon. GAO also mentioned that these farm reorganizations have reduced revenues to the U.S. Treasury, and, in fact, found that four of those eight farming operations exceeding the 960-acre limit paid $1.3 million less, annually, for water delivered to them, than if the intent of Congress were followed.

The legislation that is before this subcommittee provides long overdue corrections to these abuses. The legislation eliminates the current practices that enable mega-farms to reap enormous benefits at the taxpayers' expense.

However, this does not mean that growers on large tracts of land will not receive water. But it does mean that they will have to pay full cost for that water. And it is only right that farming operations in excess of 960 acres are charged full cost for all water delivered.

We also support this legislation because it would close yet another loophole that allows foreign investors to receive below-cost taxpayer subsidized irrigation water.

To jump further on down——

Senator BRADLEY. If you could summarize, Ms. Lancelot, quickly.

Ms. LANCELOT. We support, also, title XVI of H.R. 2567. An enactment of this provision would end the inherent contradiction between the Department of the Interior reclamation program that supports—that through the Bureau of Reclamation provides low-cost irrigation water to those farmers that also receive commodity program payments because of surplus crops.

I would just like to throw in a couple of figures. According to the Bureau of Reclamation, taxpayers provide about $830 million in subsidized irrigation water each year to farmers growing those surplus crops. And from the beginning of the reclamation program the cost of the subsidies have been calculated anywhere between $22 billion and $70 billion. And we figure that however you slice it, that is not small pocket change.

Again, with the national debt surpassing $3 trillion and the budget deficit still hovering around the $200 billion mark, we are bewildered that this legislation has yet to be enacted. We have supported this legislation in the House way back to 1986, when Berkley Bedell offered this legislation.

In conclusion, we support this legislation. Thank you.

[The prepared statement of Ms. Lancelot follows:]

PREPARED STATEMENT OF JILL LANCELOT, DIRECTOR, CONGRESSIONAL AFFAIRS, NATIONAL TAXPAYERS UNION

Mr. Chairman and members of the subcommittee, my name is Jill Lancelot. I am Director of Congressional Affairs for the National Taxpayers Union. I am pleased to speak today in favor of the reforms of the Reclamation program that are embodied in the legislation that is the subject of today's hearings. National Taxpayers Union represents 200,000 taxpayers nationwide. National Taxpayers Union is dedicated to reducing wasteful and unnecessary government spending and lowering taxes for everyone.

RECLAMATION REFORM ACT OF 1982: ENDING THE MISUSE OF SUBSIDIES

The American taxpayer has a vested interest in the long history of Reclamation in the United States. The Reclamation Act of 1902 was born out of a need to provide productive farmland to those people who were moving out West. Some wished to escape from crowded Eastern city slums, and others from the rocky New England farmlands and the saturated Southern fields. Billions of dollars were spent building dams and canals which deliver water to millions of acres in 17 Western states. Previously arid, barren land blossomed into fertile cropland.

The Reclamation Act created a cheap supply of federal irrigation water to small family farms of not more than 160 acres. The water, provided at a rate substantially below cost, enabled small farmers and their families to get a foothold, and stimulated a rapidly expanding agricultural economy.

However, over the years since 1902, farming has far surpassed the initial need set out in that original law. In short, the Reclamation Program has outlived its original purpose. Providing water for irrigation is no longer needed as a catalyst to encourage families to move west and farm. Indeed, it is questionable whether to continue subsidizing farmers at the taxpayers' expense. But it is certainly wrong to support growers that receive federally subsidized water for very large landholdings. In fact, over the years it has become clear that some of the biggest beneficiaries are not homesteaders but, instead, large corporations cultivating tens of thousands of acres.

The Reclamation Reform Act of 1982, increased the acreage limitation from 160 acres to 960. (At that time, National Taxpayers Union opposed that change because the subsidy had outlived its usefulness). Subsequent to that change the Bureau of Reclamation has failed to enforce the 960 acreage limitation. Loopholes in the cur-

rent law have allowed large-scale farmers to re-organize their vast landholdings and circumvent the acreage limitation in order to continue to receive below-cost federally subsidized water for thousands of acres of land. To continue to keep the federal subsidies, growers have carved up their huge landholdings into smaller parcels of 960 acres, each of which qualify for the subsidized irrigation water. In order to preserve taxpayers subsidized profits, clever ways were found to jointly run the subdivided farms.

The abuses that have stemmed from these loopholes have been well documented. According to an October 1989 General Accounting Office (GAO) Report, one cotton farm with over 12,000 acres was reorganized into 15 separate landholdings, with 18 partnerships, 24 corporations, and 11 trusts. That "single" farm received over one half million dollars in subsidies each year. Clearly, this in not the intent of the law. In fact, GAO stated that "Congressional expectations have not been met . . . multiple landholdings, each of which is within the Acts's 960 acre limit . . . continue to be operated collectively as one large farm while individually qualifying for federally subsidized water."

These farm reorganizations reduce revenues to the U.S. Treasury, GAO further points out. The GAO report contained eight case studies which found that four of those eight farming operations exceeding the 960 acre limit paid $1.3 million less, annually, for water delivered to them than if the intent of Congress were followed. It concluded that "this $1.3 million represents reduced revenues to which the federal government would have been entitled, and these reduced revenues likely will continue to occur annually unless the act is amended."

The legislation that is before this subcommittee provides long overdue correction to these abuses. The reforms of the Reclamation program that are proposed in these bills aim to close the loopholes that are allowed by the Bureau of Reclamation under the Reclamation Reform Act. The legislation eliminates the current practices that enable mega-farms to reap enormous benefits at the taxpayers' expense. Benefits are meant to be received only by owners of not more than 960 acres. This does not mean that growers on larger tracts of land will not receive water. But it does mean that they will have to pay full cost for that water. It is only right that farming operations in excess of 960 acres are charged the full cost for all water delivered.

The National Taxpayers Union also supports this legislation because it would close yet another loophole that allows foreign investors to receive below-cost, taxpayer subsidized irrigation water. Although, the law designates that recipients of subsidized irrigation water must be American citizens or resident aliens, foreign corporations have been receiving subsidies. The limits of the law have been avoided simply by paying a $50 filing fee to incorporate in the United States. Certainly, this misuse of taxpayer dollars should be prevented. In an era of scarce federal dollars, it is imperative to halt practices that allow the give-away of tax dollars to foreign corporations. This legislation charges foreign-bed corporations full cost for Reclamation water which will eliminate a blatant and outrageous subsidy.

The intention of both House and Senate legislation appears to be the same: end the abuses of the Reclamation program. The National Taxpayers Union supports such an approach.

### SURPLUS CROPS AND BELOW-COST IRRIGATION: A BLATANT CONTRADICTION

National Taxpayers Union particularly supports the provision in Title XVI of H.R. 2567 which relates to subsidized reclamation water used to grow surplus crops. The National Taxpayers Union has previously supported this provision offered by Representative Gejdenson in the House of Representatives, which was adopted by the House with overwhelming support.

Enactment of this provision would end the inherent contradiction between the Department of Interior's reclamation policy and the Department of Agriculture's crop and income support program. On the one hand, the federal government through the Bureau of Reclamation provides below-cost irrigation water to some farmers, while on the other hand the federal commodity programs pay many of the very same farmers not to grow these same crops. The legislation before this subcommittee would require farmers who grow surplus corps to pay full cost for the irrigation water they receive from the Bureau of Reclamation. This would put an end to a policy that condones farmer double dipping: taxpayers underwrite tens of billions of dollars for acreage reduction programs, that curtail the production of price supported surplus crops; yet, at the same time, taxpayers provide enormous subsidies to the same beneficiaries, for cheap irrigation water to grow these surplus crops.

How much has the government spent providing irrigation water to grow surplus crops? According to the Bureau of Reclamation, the taxpayers provide about $830 million in subsidized irrigation water each year to farmers growing surplus crops.

To make matters worse, in a separate program the U.S. Department of Agriculture paid $379 million in commodity price support payments to farmers who were using federally subsidized water to grow surplus crops, according to the Economic Research Service of the USDA. Clearly, taxpayers are subsidizing programs that are operating at cross-purposes.

From the inception of the Reclamation program, the cost of the subsidy was calculated to be at least $22 billion by the Interior Department's Office of Policy Analysis. Yet, the Congressional Budget Office estimates that the same subsidy costs upwards of $70 billion. Regardless of the costs in the past, Congress now has the opportunity to save.

CONCLUSION

The National Taxpayers Union has encouraged the Congress to adopt the policies inherent in this legislation for a long time. In fact, we are bewildered that this legislation has yet to be enacted. With the national debt surpassing $3 trillion and the budget deficit still hovering around the $200 billion mark, it is imperative to stop the policy which allows the government to pay farmers not to grow surplus crops while at the same time provides subsidized water to many of these same farmers who are growing surplus crops on other parts of their land. This policy hits taxpayers with a triple whammy: tax dollars pour subsidized water on unneeded crops; tax dollars pay farmers not to grow excess crops; and finally, tax dollars pay to store these surpluses.

The National Taxpayers Union strongly supports the legislation that the subcommittee is considering today. It will stop the unfair and unintended use of Federal funds by stopping the violations that are occurring under the Reclamation Reform Act. At the same time, it will cut the size of commodity payments under the U.S. Department of Agriculture price support program. This legislation is long overdue.

Senator BRADLEY. Thank you very much, Ms. Lancelot.

Let me thank all of you for your testimony.

Senator McClure, do you have any questions? We want to try to move along because we have people who have waited a long time and come a long way. So I know that you will be sensitive——

Senator MCCLURE. Mr. Chairman, I have a number of questions. I will submit most for the record for response in writing if the witnesses would please answer those questions when submitted to them.

And I do not know exactly where to start. Because certainly, as I said to you a moment ago, Mr. Chairman. I took some time in examining the GAO because while individually they are entitled to their opinion about what the law ought to be, they are not entitled to an opinion about what the law is.

Unlike the people before us now—you are entitled to an opinion about what the law ought to be. And if we have differences of opinion, that is a difference of opinion. We can explore the reasons why.

I am not going to make a long statement about reasons why you and I may have differences of opinion. But I do have a couple of comments or questions.

Ms. Lancelot, you state that it is certainly wrong to support growers that receive federally subsidized water for very large landholdings.

When you use the term "very large landholdings" do you mean literally, land held by ownership or lease, or do you mean land operated or managed as a unit?

Ms. LANCELOT. We think that—see this Panoche Farm up here that has 12,345 acres, regardless of the semantics involved, there is

12,000 acres. And many of those acres, much of those acres, all of those acres, it looks like to me, are receiving federally subsidized water.

We have been on record that we, across the board, whether it is transportation or energy or reclamation, we are against subsidies.

Senator McCLURE. Well, I suppose you do not like the fact that we are building a subway system in Washington, DC.

Ms. LANCELOT. We are on record, actually, as saying that the Federal Government should not—the concept of a subway, of course, is fine. But we think the users of that system should pay their way.

Senator McCLURE. And we do not like the Federal Aid to Highway Act, do we?

Ms. LANCELOT. We have been on record and very many parts of that Federal Aid to Highway Act—we are against a lot of that, as a matter of fact, yes.

Senator McCLURE. Mr. Keyes.

I have a very high regard for you, personally. And the only criticism I have of your statement is you relied on the GAO for a starting point.

[Laughter.]

Senator McCLURE. And that was a fatal mistake. Because I assure you, that as dumb as you think we are—no, I will not characterize it that way—as much as you think is possible for Congress to do inexplicable things, occasionally we did something very carefully and by calculation.

We intended a result. We did not use the term inadvisedly that you think perhaps we did not intend to use, on page 2 of your statement: "Congress failed to define and use the term farm or farming operation in establishing the acreage limit. Instead, Congress used the term landholding." We did that deliberately.

It was not accidental. We intended to make a difference in using those terms. Now GAO did not understand that. And they misled you. And they should apologize to you.

[Laughter.]

Senator McCLURE. And I doubt that they will.

Ms. Lederman, in your statement you state that the League is concerned about environmental degradation, especially groundwater degradation.

Are you aware that in many irrigation districts the result of full-cost pricing is not to elect to pay the full cost, but to use ground water as an alternative?

And I assume that your organization would not support that result.

Ms. LEDERMAN. I am sorry. I did not quite understand your question. Could you say that again, please?

Senator McCLURE. Well, if they had to pay full cost for water they would switch to using ground water and exacerbate the ground water problem.

Ms. LEDERMAN. We certainly would not want to exacerbate the ground water usage, no.

Senator McCLURE. The answer to that story, I suppose, is stop farming.

Ms. LEDERMAN. I do not think we would support that, either.

Senator MCCLURE. And I suppose that you, unlike the National Taxpayers' Union do not object to subsidized housing.

Ms. LEDERMAN. In this instance, our understanding of the congressional intent was that it was meant to subsidize family farms. And the re-definition of 960 acres was to recognize that family farms were somewhat different in the 1980's than they were at the turn of the century. And it is this congressional intent that we believe was subverted by the interpretation that the Bureau of Reclamation has used.

And I think this is where you and I differ in understanding congressional intent.

Senator MCCLURE. Well, I am always frustrated by that because when I am the author of a statute, I think I know what the words meant.

[Laughter.]

Senator MCCLURE. And I think I know what I intended. And it is always upsetting to me to have somebody come in and say, well, Senator, you really did not mean what you thought you meant. You really meant what I thought you meant.

Ms. LEDERMAN. Language gets that way.

Senator BRADLEY. Lawyers do that all the time.

[Laughter.]

Mr. KEYES. Mr. Chairman?

Senator MCCLURE. One of the problems I have on this side of the desk, I guess.

Mr. Keyes.

Mr. KEYES. Mr. Chairman, I think that the problem is—it could very well be one of perception. And I have to confess that especially over the course of the last year, as I work with Citizens Against Government Waste, I have stretched to my threshold of incredulity in terms of what the Government can and cannot do. It does an awful lot of silly things.

But in this particular case, I think it is simply a matter of looking at what is there. There appears to have been a desire that folks who have 960 acres or less of land should be helped. And that folks who have more land than that should not be helped.

As far as I can tell, it is a very simple matter that there are cases that appear to be reasonably probable, where folks that have a lot more land than that being farmed for common, shall we say, purposes, for purposes where they are all getting together and farming it for a common benefit, are benefiting from this act.

And in a general way I would have to say this: There are just too many instances right now, across the board—I am not necessarily against subsidies of the right kind here and there—too many instances where folks justify subsidies crying poverty, and you examine the record and the subsidies are going to people who ain't at all poor.

I think the taxpayers of this country are fed up with it. Most of them are working people, you know. And they do not particularly care to have money taken from their working pockets and put into the hands of people who are making money hand over fist in big business. And this is a serious problem of perception. And that is, I guess, what my organization is trying to address.

Senator McCLURE. The Chairman has his gavel just poised and nervously swinging it back and forth, and I will not ask further questions. I will leave it up to you as to whether to recognize witnesses or not.

But I do want to say just this. The same thing is true with respect to building the D.C. subway. People in Idaho are not exactly very, very happy about all of the money we were pouring into a subway system that, in this city and one or two others, will more than equal the total expenditure on irrigation projects, reclamation projects in the history of this country.

And the people of this area certainly encompass some of the poorest people in the United States, and some of the richest.

Senator BRADLEY. On that note, Senator Wallop.

Senator McCLURE. And that subsidy is rather undifferentiated.

Senator BRADLEY. Senator Wallop.

Senator WALLOP. Mr. Chairman, I will not waste much of your time. And Mr. Howard I am grateful for you not reading the—either the time not permitting you to or your judgment restraining you from reading the seven or eight rather inflammatory pages about my State.

[Laughter.]

Senator WALLOP. Let me just tell you our side of the story, just for half a second, and it will not take very long.

But last November, the National Wildlife Federation, without so much as a peep to the Governor of the State of Wyoming, to either of the Senators of the State of Wyoming, or the Congressman of the State of Wyoming, went to a California Congressman to attach an amendment to the Buffalo Bill Dam legislation designed to control Wyoming waters.

I wonder if you can understand why we might have resented that way of proceeding? A simple yes or no will do.

Mr. HOWARD. I can understand that we have been waiting for 15 years for the State of Wyoming to deal with in-stream flows for fish and wildlife in the Shoshobi River.

Senator WALLOP. Then the rest of the information is that you are not informed about the rest of the world, either. You never talked to us.

Mr. HOWARD. That is not true.

Senator WALLOP. It is absolutely true.

In fact, the gentleman behind you came and said that he was going to work with somebody and that is the last we ever heard of him because the State engineer was out of town at the moment at the time when that took place. But that was after last November's hearing.

Now your testimony outlines the history of the flows below the project, quoting from reports and studies done mainly in 1974 and 1981, and you complain that neither the State nor the Bureau took any actions to protect the fisheries.

But in 1985 Wyoming did—did amend its laws to provide in-stream flows for fisheries as a beneficial use. And pursuant to that statute, it mentions it in your testimony, the Wyoming Game and Fish Department has performed the necessary field studies for determining appropriate in-stream flows. And when the modification

is complete, there will be additional waters in the system that were previously unavailable for the fisheries.

Now just let me tell you that the 100 cubic feet per second flow has been adopted and will be provided. And 250 cubic feet per second flow below is not in doubt. However, that amount has only been suggested, and has not been through the public participation process provided for in law. And so it is premature for this Congress to come in and lay down a decision on Wyoming law. And it is unfitting of the National Wildlife Federation to say that the State of Wyoming has taken no action, because it is simply not true.

That is it, Mr. Chairman.

Senator BRADLEY. Thank you very much, Senator Wallop. Let me thank the panel very much for your testimony. I appreciate it very much. It was very helpful. And we will move on.

The last panel of the day is Leo Holzbauer, of Lake Andes-Wagner in South Dakota; Tom Donnelly, National Water Resource Association; Jason Peltier, Central Valley Project; Grant Ward, Agri-Business Council; Cecil Miller, Arizona Farm Bureau; Denslow Green, Attorney at Law, Madera, California.

Now I offer all of you an apology. I frankly did not expect the Congressmen from California to be here, and in such full force. And so I am sorry that we were delayed—plus a few votes.

I am going to impose a burden on each of you, but sometimes that produces the best results. And that is I would like to limit each of you to 3 minutes. We understand, I think, the broad outline of the debate. Your statements will be in the record in full. I wonder if you could share with the committee in your 3 minutes, maybe 4 if you are good, really how you feel about this.

All of the suggested amendments, all of the technical aspects related to the bill in question, all of your specific recommendations, all of the numbers will be in the record. And the subcommittee and its staff will review them in great detail.

We are up against a real time problem, however. And so I would urge you to abide by those limitations.

Senator WALLOP. Mr. Chairman, let me take 30 seconds——

Senator BRADLEY. Senator, having been in this chair before, Senator Wallop, I know that you——

Senator WALLOP. Let me just take 30 seconds of your time to——

Senator BRADLEY.—have some sympathy for this predicament.

Senator WALLOP. I do, and I used to do that, too. In fact, they kicked me around a little bit for cutting off a movie actor in mid-statement.

But my only statement now is to compliment you on the diversity of the panels and witnesses that you have held for this. I think it gives a good impression as to what the various issues are, and just hats off. I think it was well done.

Senator BRADLEY. Thank you very much. Thank you, Senator Wallop. Do you want to extend your comments?

[Laughter.]

Senator BRADLEY. Let us begin with Leo Holzbauer of Lake Andes. Leo, welcome back to the subcommittee. You were here a short while ago, and your comments were right on target then and very helpful. Welcome to the subcommittee.

## STATEMENT OF LEO HOLZBAUER, EXECUTIVE DIRECTOR, LAKE ANDES-WAGNER WATER SYSTEMS, INC.

Mr. HOLZBAUER. Thank you, Mr. Chairman.

I am Leo Holzbauer and we were back here June 19, 1990, on S. 2710. I will just read three or four of my paragraphs and I will just let it go as that.

Just to indicate to the people here that my name is Leo Holzbauer, I live in Wagner, South Dakota. And I am the Executive Director of the Lake Andes-Wagner Water Systems, Inc., the project sponsors for the proposed 45,000 acre Lake Andes-Wagner that was authorized under S. 2710.

S. 2710 would also authorize the Marty II unit, which consists of 3,000 acres of Indian-owned land of the Yankton-Sioux reservation, for which the Yankton-Sioux tribe and its sponsors, with whom we have worked closely seeking authorization.

And the reason I am here today testifying is that I believe firmly that the merits of small irrigation projects like Lake Andes-Wagner and the Marty II have gotten lost.

They have gotten lost amid arguments whether the excess of land provisions of the reclamation law has been faithfully adhered to, and about the double subsidy issue was the subject of the title XVI of H.R. 2567.

There is no question about the reclamation law, from its beginning, has had the principal purpose of fostering family farms. And in 1982 Congress raised the acreage limitation in accord with the present-day concept of the appropriate size of irrigation farms. At that time, Congress also strengthened the mechanism by which the new limits on size in the irrigation holdings would be carried out.

However, there appears to be a public perception that the 1982 law is not working and it should be, and the perception that big operators are getting benefits that Congress intended for family farmers.

This perception tarnishes all proposals for new projects, even though they do not present any such issues. The project sponsors—or as project sponsors, we have met the double-subsidy issue head-on. There is included in the S. 2710 and the House companion, H.R. 5012, a provision that limits crop acre base and program payment yields to pre-project conditions.

In other words, the Lake Andes-Wagner and Marty II farmers will not benefit under the price support payment for any additional yields resulting from irrigation. That approach, which we originally included in the Lake Andes-Wagner, Marty II legislation introduced in the 100th Congress, has been endorsed by the administration.

We are family farmers. We are not paper farmers. We do not engage in practices that have given rise to the controversy whether the 1982 law has been evaded. And we have, on our own, proposed legislation and a provision which permits this double subsidy from arising.

We want to stay and farm in my county, Charles Mix. We want to keep our family farms. And if we do not get our project authorized, however, I am afraid that the present trend will continue, and in the end, the small farmer will be driven out.

I thank you for this opportunity to present this and hope that things can move forward so small projects will not suffer the consequences of the perception of the large operators.

Thank you.

[The prepared statement of Mr. Holzbauer follows:]

PREPARED STATEMENT OF LEO HOLZBAUER, EXECUTIVE DIRECTOR, LAKE ANDES-WAGNER WATER SYSTEMS, INC., WAGNER, SD

Mr. Chairman and Members of the Subcommittee, my name is Leo Holzbauer, I live in Wagner, South Dakota, and I am the Executive Director of the Lake Andes-Wagner Water Systems, Inc., the project sponsor for the proposed 45,000 acre Lake Andes-Wagner Unit that would be authorized by S. 2710. S. 2710 would also authorize the Marty II Unit which consists of about 3,000 acres of Indian-owned land on the Yankton-Sioux Reservation for which the Yankton-Sioux Tribe is the sponsor and with whom we have worked very closely in seeking authorization.

Let me begin by saying that neither the Lake Andes-Wagner Unit nor the Marty II Unit, upon which this Subcommittee held a hearing on June 19, present any problem under the existing reclamation reform provisions of the reclamation law which were enacted into law in 1982. Nor do they present any problems of the kind to which, as I understand it, both S. 2659 and Title XVI of H.R. 2567 as that measure passed the House of Representatives, are directed. I also want to make it clear that I am not familiar enough with the terms of these two measures to comment on their detail.

The reason I am testifying today is that I believe firmly that the merits of small irrigation projects like Lake Andes-Wagner and Marty II have gotten lost in the arguments about whether the excess lands provisions of the reclamation law have been faithfully adhered to and about the "double subsidy" issue, which is the subject of Title of H.R. 2567.

There is no question but what the reclamation law from its beginning has had as a principal purpose the fostering of the family farm. In 1982 Congress raised the acreage limit to accord with present day concepts of an appropriate size for irrigation farms. At that time Congress also strengthened the mechanisms by which the new limits on sizing of irrigated holdings would be carried out. However, there appears to be is a public perception that the 1982 law is not working as it should, a perception that big operators are getting benefits that Congress intended for family farmers. This perception tarnishes all proposals for new projects even though they do not present any such issues.

As I have said, I am not expert in the details of either S. 2659 or Title XVI of H.R. 2567. And the arrangements of the kind that have been criticized as being out of keeping with the objectives of the 1982 law do not exist in my part of the country. Therefore, I am not in a position to give the Committee advice as to whether the public perception that I have mentioned is right or wrong. If the 1982 law is not working as Congress intended, it should be corrected. I am sure that out of the consideration of this Committee a solution can be fashioned which will eliminate the factors that have given rise to that public perception while at the same time not crippling legitimate operations.

As project sponsors we have met the "double subsidy" issue head on. There is included in S. 2710 and in the House companion, H.R. 5012, a provision that limits crop acreage base and program payment yield to preproject conditions. In other words, the Lake Andes-Wagner and Marty II farmers will not benefit under the price support program for any increased yields resulting from irrigation. That approach, which we originally included in the Lake Andes-Wagner/Marty II legislation introduced in the 100th Congress, has been endorsed by the Administration.

The area from which I come is an area of irregular rainfall. Some times the rains are sufficient and come at the right time. In most years, however, that is not the case. We are located in a county (Charles Mix County) which has been declining in population since 1950. Our economy is based on agriculture, principally the raising of livestock and the growing of forage crops. When the all too frequent droughts hit us, we cannot raise sufficient crops to provide feed for the livestock. The result all too often is our herds have to be sold off. We cannot, because of the high costs involved, afford to import fodder. We either grow our own or we are in deep trouble. Our children are not staying in Charles Mix County, our average age is getting older as the population decreases. The purpose of our proposed Units is to stabilize our agricultural water supply. This in turn will not only stabilize our livestock in-

dustry, it will permit a diversification into specialized crops not under government price supports. We need the irrigation to save our farms and our way of life.

We are family farmers, we are not paper farmers, we do not engage in the practices that have given rise to the controversy over whether the 1982 law is being evaded. And we have, on our own, proposed in our legislation a provision which prevents the "double subsidy" from arising.

We want to stay and farm in Charles Mix County. We want to keep our family farms. If we do not get our project authorized, however, I am afraid that the present trend will continue and in the end, the small farmer will be driven out.

Thank you for the opportunity to present this statement.

Senator BRADLEY. Thank you very much, Mr. Holzbauer.

Mr. Donnelly.

## STATEMENT OF THOMAS F. DONNELLY, EXECUTIVE VICE PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION

Mr. DONNELLY. Thank you, Mr. Chairman, members of the committee.

I appear before the committee today to express the Association's opposition to S. 2659 and title XVI of H.R. 2567.

The principal objective of our Association is to preserve the integrity of the Reclamation Program. Your statements, Mr. Chairman, introducing S. 2659 are supportive of the program, and I believe we share this common goal.

It is important, however, to recognize that there are a wide range of farm management, custom farming and family relationships that are legitimate and efficient and, furthermore, Congress specifically intended that they be preserved.

S. 2659 puts many, if not all of these relationships, at risk. By introducing the term operator and relating the entitlement to the individual or entity who performs the greatest proportion of the decision making or supervision at any given point in time, the bill triggers full-cost pricing for thousands of farmers throughout the West.

As an example, take a processor who demands specific quality control from his sellers. He may dictate the time of planting, the type of fertilizer, and how and when it is applied, and the time of harvest. Under S. 2659 all of the lands thus operated will be aggregated as one entitlement.

There are numerous examples of legitimate operations such as these that would be adversely affected by the broad language of S. 2659. Reclamation law limits the entitlement of irrigation water to the individual or entity that receives the economic benefit. The economic interest test is a sound principle of current law, and NWRA strongly supports this concept.

The GAO report which you heard today supports the criticism that the General Accounting Office does not have the knowledge, expertise, or objectivity to address complex questions of law and national policy.

In 1987 Congress amended a 1982 act and directed the Secretary to conduct audits. We would urge you, Mr. Chairman, to wait until the results of those audits are completed, before we move to prejudge the Department or pre-judge the programs.

In reference to title XVI of H.R. 2567, NWRA is strongly opposed to this legislation. The economic and environmental consequences of this legislation are enormous. Irrigated agriculture is the eco-

nomic base around which many of our communities in the West have developed and grown.

For some, it is the only means of existence. In many regions, farmer already operating at the margin have little alternative to growing program crops. Full-cost water is not a viable alternative. Therefore, they will be forced to return to declining ground water supplies or go out of business.

Sound agricultural policy requires a comprehensive, national solution, not a regionally devastated approach as proposed by Congressman Gejdenson and Senators Heinz and Harkin. These bills also represent an ignorance of the terms, conditions, and reasons for the formulation by Congress of the reclamation program.

In addition, the term double subsidy is a gross misrepresentation that is insulting to Western irrigators.

Senator BRADLEY. Mr. Donnelly, you have 30 seconds.

Mr. DONNELLY. All right——

Mr. Chairman, many of the people in the West——

Senator BRADLEY. Just tell me how you feel about it.

Mr. DONNELLY. Well, we are opposed to both of them. We think that at this point in time the legislation that is on the table is ill conceived and just not in the best interest of the country in general.

[The prepared statement of Mr. Donnelly follows:]

PREPARED STATEMENT OF THOMAS F. DONNELLY, EXECUTIVE VICE PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Thomas F. Donnelly, Executive Vice President of the National Water Resources Association. I appear before the Committee today to express the Association's opposition to S. 2659 and Title XVI of H.R. 2567.

The National Water Resources Association (NWRA) is a nonprofit federation of state associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource, water. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

S. 2659, THE RECLAMATION REFORM ACT AMENDMENTS

A principal objective of the Association is to preserve the integrity of the Reclamation Program. Chairman Bradley's statement introducing S. 2659 on May 18 is supportive of the program and I believe we share this common goal with him. It is important, however, to recognize that there are a wide range of farm management, custom farming, and family relationships that are legitimate and efficient. Furthermore, Congress specifically intended that they be preserved. Senate bill 2659 puts many, if not all, of these relationships at risk.

The conference report on the Reclamation Reform Act (RRA) Amendments of 1987 restated an important principle agreed to by Congress in passing the 1982 Act. The report reads, "It is important to state that the RRA did not limit the size of a farming operation, but rather limited the benefits of less than full cost irrigation water." This important principle is compromised by S. 2659.

By introducing the term "operator" and relating the entitlement to the individual or entity who performs the greatest proportion of the decisionmaking or supervision at a given point in time, the bill triggers full-cost pricing for thousands of farmers throughout the West. As an example, take a processor who demands specific quality controls from his sellers. He may dictate the time of planting, the type of fertilizer and how and when it is applied, and the time of harvest. Under S. 2659, all the lands thus "operated" would be aggregated as one entitlement.

A common farming operation in the West would include a number of family members who share equipment and various responsibilities of the farming operation.

While they all maintain separable economic interest in the operation, under S. 2659 their individual landholdings could also be aggregated as one entitlement. In fact, they could be economically forced to sell all land in excess of 960 acres.

There are numerous examples of legitimate operations such as those I have described above that would be adversely affected by the broad language of S. 2659.

Reclamation law limits the entitlement of irrigation water to the individual or entity that receives the economic benefit. The economic interest test is a sound principle of current law and NWRA strongly supports this important concept.

In October 1989, a report by the U.S. General Accounting Office alleged that abuses to the acreage limitations of the Reclamation Reform Act of 1982 exist. There have been no specific instances identified demonstrating that such has been the case, but the publicity, media manipulation, and demagoguery that have occurred has done considerable damage to honest hardworking reclamation farmers in the West. Interestingly enough, the report itself specifically acknowledges that the law is being violated. This particular report supports the criticism that the General Accounting Office does not have the knowledge, expertise, or objectivity to address complex questions of law and national policy.

In 1987, Congress amended the 1982 Act and directed the Secretary of the Interior to "complete audits of those legal entities and individuals whose landholdings or operations exceed 960 acres within three years. The results of that audit are due by December 22 of this year.

I am not telling the Committee that problems do not exist. We simply do not have creditable information on which to determine if there are violations or abuses. We believe that it is unreasonable to pursue changes to the 1982 Act without such information and imprudent to prejudge the Department's ability to administer and police the program without the results of the Congressionally mandated audit.

We would urge the Committee to make that report the basis for any changes to reclamation law. Compliance requirements are very clear; if violations exist we support the strongest punitive measures.

We contend that the primary goals—preservation of the family farm and the widest possible distribution of program benefits—of the Reclamation Reform Act of 1982 are being accomplished. Federal reclamation law has forced the breakup of large landholdings and made it possible for tenant farmers and others to buy excess land and establish their own farms. Program benefits are shared by more farmers now than ever before.

Although of secondary importance, I cannot envision how the Bureau of Reclamation could ever administer this legislation. Certification and reporting requirements are a nightmare now, costing districts thousands of dollars annually. This problem would be exacerbated by S. 2659.

### TITLE XVI OF H.R. 2567

Title XVI of the House passed bill H.R. 2567 deals with the elimination of a so-called "double subsidy" in our country's agriculture program. NWRA is strongly opposed to Title XVI of H.R. 2567 and similar legislation, S. 1032, introduced in the Senate by Senators Meinz and Markin.

According to the authors of these bills, they will rectify a major flaw in our Nation's farm policy. The real problem that these bills attempt to address is the surplus production of certain crops. Congressman Gejdenson states that, "Below-cost water significantly contributes to the glut of farm products." In reality, less than two percent of the surplus crops grown in the United States are grown on project (Bureau of Reclamation) served lands. Furthermore, a high percentage of that two percent is used to feed livestock and does not contribute to the unmarketable surplus.

### THE ECONOMIC AND ENVIRONMENTAL CONSEQUENCES OF THIS LEGISLATION ARE ENORMOUS

Irrigated agriculture is the economic base around which many of the communities in the West have developed and grown. For some it is the only means of existence. In many regions, farmers, already operating at the margin, have little alternative to growing program crops. "Full cost" water is not a viable alternative. Therefore, they will be forced to return to declining groundwater supplies or go out of business.

The sponsors believe that the bill will increase federal revenues as a result of higher payments for project water. The results would be quite the opposite. Reduced repayment of project costs, increased program administration costs and added dependency of some families and communities on federally financed social and welfare programs are virtually guaranteed.

Sound agriculture policy requires a comprehensive national solution, not the regionally devastating approach proposed by Congressman Gejdenson and Senators Meinz and Harkin.

These bills also represent an ignorance of the terms, conditions, and reasons for the formulation by Congress of the Reclamation Program. In addition, the term "double subsidy" is a gross misrepresentation that is insulting to western irrigators.

At the turn of this century, Congress and the Nation struck a deal with those pioneers willing to settle and develop arid and semi-arid regions of the West. The federal government agreed to construct the infrastructure interest free and the pioneers agreed to provide the sweat and hard work required to turn vast wastelands into highly productive agricultural acreage. It was a partnership, a partnership that was successful beyond the wildest expectations of its creators.

The Bureau of Reclamation estimates the total federal investment in completed project facilities to be $9.7 billion. Yet in 1988 alone, the total value of the crops irrigated with Reclamation project water totaled almost $9 billion. In addition, Bureau projects provided water to 26.4 million people, generated 42.2 billion kilowatt hours of electricity producing total federal revenues of $584.2 million, provided 54.4 million visitor days of recreation use, and totaled $9.6 million in flood control benefits.

I know of no other federal/non-federal program that has been as productive and successful as the Federal Reclamation Program. With that kind of return on investment, one has to ask who is subsidizing whom?

There is considerable misunderstanding and misrepresentation of the irrigation benefit to the farmer. The only benefit or "subsidy" is the forgiveness of interest by the Federal government on the cost of the construction of irrigation projects. For completed projects, the capital costs have been paid for by the federal government and the project beneficiaries are obligated to repay these costs over time. That was the nature of the deal that was agreed to by reclamation farmers and the Federal government. In addition, project water users are required to pay the full cost of operations and maintenance annually.

In a recent editorial by columnist Jack Anderson, Mr. Anderson told his readers that, ". . . $830 million of the $2.2 billion a year the taxpayers spend on water subsidies goes to farms that raise surplus crops." Both of these numbers are extremely exaggerated for effect. This type of misrepresentation is blatantly unfair to western farmers. Taxpayers do not pay one cent more in taxes each year because of existing reclamation facilities. In fact, they pay less. Congressman Gejdenson also promoted this gross misrepresentation during the House debate on his amendment.

Given the enormous return on investment that the Reclamation Program has produced, this type of inflammatory rhetoric is unconscionable especially in light of today's federal budget crisis.

This legislation is ill conceived, economically and environmentally dangerous, and unreasonable. We oppose Title XVI of H.R. 2567 in the strongest terms possible and urge the Committee to reject this and similar legislation.

Bureau of Reclamation projects bring water to the farmer in the semi-arid half of our Nation. Corps of Engineer projects, on the other hand, keep water from annually flooding valuable farmlands principally in the eastern half of the country. This legislation incongruously singles out Bureau projects and their beneficiaries for unequal and unfair treatment. We are a Nation of subsidies. We subsidize transportation, education, our sick and our less fortunate, to name a few. That is what the "welfare clause" of the Constitution is all about. When members of Congress second guess these programs it is important to distinguish between productive subsidies and those that are not. It is also important to determine the impact nationwide of changing these programs. We contend that these, if you insist "subsidies," are highly productive and changing them as proposed will be economically devastating to the Nation in general.

On behalf of the membership of the National Water Resources Association, I thank the chairman and the committee for allowing us the opportunity to present this testimony, a right that we were denied in the House proceedings. I also would like to take this opportunity to commend Messrs. Jensen, Ellsworth, and Beirne of the committee's staff for their genuine interest in our concerns and willingness to help in resolving these important issue.

Many of our members are just now understanding the impact of this legislation on their operations. I would request that I be allowed a reasonable amount of time to revise and extend our remarks, as well as provide the committee with statements for the record from our members.

Thank you Mr. Chairman and members of the Committee.

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Senator BRADLEY. Okay, thank you.
Jason Peltier.

## STATEMENT OF JASON PELTIER, MANAGER, CENTRAL VALLEY PROJECT WATER ASSOCIATION

Mr. PELTIER. Yes, sir, Mr. Chairman, Jason Peltier with the CVP Water Association. I will first give you the very short version of my testimony which is no, we do not support the bill.

The second, medium-length version is yes, we support——

Senator BRADLEY. Let me compliment you on your brevity.

Mr. PELTIER. We support everything that Senator McClure has said in the hearing today. I cannot think of a thing that he has said that I could dispute.

[Laughter.]

Mr. PELTIER. And we have even agreed with many of the things you have said, Mr. Chairman.

Senator BRADLEY. You even support the seaport in Idaho?

Mr. PELTIER. Well, it is not ours to question.

But I would—I will just hit on three quick items.

The first would be a kind of historical perspective. It is interesting to look at the history of California. You see in 1859, 10 years after the Gold Rush, the conflict over farm size had already begun. And that was a result of the Mexican land grant system. So we have lived with this for a long time. And we have spent a lot of energy trying to resolve it. And it is obvious we are going to continue to spend a lot of energy trying to resolve it.

I think the—I will skip over my comments on the economic interest test, because that really is the guts of our belief in how the law works, and why it works. I think that has been pretty well detailed today by Senator McClure.

I will jump, though, to the notion that the passage of this kind of reform will mean more money for the treasury. False. It is false because the payment ability or the margin that the farmers are working on—I do not know farmers making money hand over fist, as Mr. Keyes said. I know most farmers operate on a 4 to 5 percent return on investment. The individual economic circumstances do not permit any kind of a rapid escalation in the cost of water to be accommodated.

The last point I would make is that as relative to the absolute essential need that we understand the impacts and that Congress intend the impacts of any change in reclamation law because there are so many thousands and thousands of people that live and rely on that.

One last—I would respond to a question that you offered to Mr. Pashayan and that was how can State project farmers survive $50 water when we say we cannot in the reclamation program?

One answer might be that just look at Devil's Den water district, which gets State project water. It has no ground water. The district is out of business. It was purchased by Castake Lake water district in an effort to move all of their water, 12,000 acre-feet, to the northern frontier of the Los Angeles megalopolis and use it for urban growth.

That district, relying solely on State project water could not cut it. And that is an example of in tough times what happens. You go out of business, no margin.

Thank you, Mr. Chairman. We really appreciate the hearing, even though it is brief.

[The prepared statement of Mr. Peltier follows:]

PREPARED STATEMENT OF JASON PELTIER, MANAGER, THE CENTRAL VALLEY PROJECT WATER ASSOCIATION

Mr. Chairman, and members of the Subcommittee:

I am Jason Peltier, Manager of the Central Valley Project Water Association. Our organization represents water districts holding contracts with the United States for the supply of water from the Central Valley Project (CVP). The CVP serves supplemental water to some 20,000 farmers on three million acres of farmland in California (about a third of all the irrigated land in the State) and some three million families, primarily in the San Francisco Bay region. The CVP serves almost one-third of all lands served by the U.S. Bureau of Reclamation. These same lands generate about one-half of all farm income attributable to the Reclamation program.

We sincerely appreciate the opportunity to appear before you today to address S. 2659. Changes to Reclamation law can impact over one hundred thousand farmers and thousands of rural communities in the 17 western states. The specter of new dictates changing how and what we farm has us greatly concerned. The potential social and economic impacts in the West demand that you, the lawmakers, and we, the public have a full and complete understanding of policy changes. The House of Representatives recently passed sweeping changes to Reclamation law without a single minute of input from the farmers directly affected. We remain deeply disappointed by this fundamental breakdown in the public policy process. We applaud your desire to assure full understanding in the Senate Mr. Chairman.

THE BILL

The purposes and objectives of S. 2659 are most unclear; certainly its passage would result in a major shift in the eligibility of farmers for Reclamation water. For reasons we do not understand, the focus of Reclamation law enforcement would be changed from the people who derive the immediate benefits of the projects, that is, those who own the crops produced through the use of federal water, to people who only provide some supervisory work on a farm. We must oppose S. 2659 because it extends and expands federal regulation far beyond what we consider reasonable: a limitation based on the financial benefit to any one person resulting from the use of Reclamation water.

By adding a definition of "operator", meaning the individual or entity that performs the greatest proportion of the decision making or supervision for the "agricultural enterprise" on a particular parcel of land "at a given point in time", the spotlight suddenly moves to people who have no direct economic interest in the value of the water used for irrigation. The term "landholding" is expanded to include not only owned or leased land, as Reclamation Law has always been enforced in the past, but now also land "operated". The term "Agricultural enterprise" appears to have significance but is not defined at all.

The use of the term "operator" is so broad that the distinction between those who receive the most: immediate Reclamation benefits, the owners and lessees of property, and those who simply perform some service or supervise the farming, is lost.

EXAMPLES AND QUESTIONS

For example, seed companies or food processors frequently define strict conditions for the production of a crop in order to assure a certain uniformity and quality. In some cases this control is so extensive that the farmer almost becomes akin to a caretaker of the crop at times, having little or none of the decision making or supervision responsibility. Under the proposed Bill, the seed company or food processor would be the "operator", even though the farmer, who is compensated on the basis of his production, is the one who really receives the benefits of the irrigation water. Worse yet, all of the land producing crops for the seed or food company would be "operated" by that company and so all but 960 acres of it would be subject to a full cost price for the water.

More specifically, there is a family farming in Glenn County, California who raise certified sunflower seed. This seed is sold by the seed company to farmers in other

states and nations who raise sunflowers for processing. In order that the seed variety be untainted by cross-pollination from other sunflowers, they require this family to have a minimum distance of one mile between their field and that of anyone else growing sunflowers. They are also prohibited from raising the crop in the same field two years in a row, and there are other conditions and restraints placed on them to assure the quality of that crop. The seed companies, for obvious reasons, are cautious with their contracts, and as a result those contracts are usually highly sought after. This family, however, could hardly afford to enter into an agreement to raise this crop if by doing so the field representatives of the seed company will be deemed and "operator" of their land, causing their farm to be aggregated together with other of that company's contract farmers.

Let me stop a moment to make certain that we all clearly understand that in most areas served by the Central Valley Project, and probably in almost any other Reclamation project, it is economically impractical to raise most crops if the farmer must pay full cost for his water. In Dunnigan Water District, for instance, wholesale water is purchased from the Bureau at a cost of $14.30/acre foot. Full cost is more than $85/acre foot. S. 2659 will trigger full cost charges on a wide scale, meaning either that land will go out of irrigated crop production or, in those areas where groundwater might be available, the farmers will turn back to that source. Increased groundwater pumping and the exacerbation of overdraft problems will, at best, provide stop-gap economic protection.

Both the conversion to dryland farming and groundwater overdrafting carry serious environmental and economic consequences which must be well understood and intended prior to the passage into law of this measure.

Some may argue that shifting to higher value crops is the answer but we must recognize that in many cases it is impossible for farmers to change their operations, and even if they could, many of their alternatives would be unaffordable, too. Rice farmers cannot simply shift to growing citrus. That is like requiring a factory which produces cars to begin making watches overnight.

There are many examples of how this Bill will harm people who have never before violated the principles or letter of Reclamation Law. A widow whose son has his own, separate farm, will not be able to rely upon her son to also farm her property. The risk will be too great that the son will be found to be the "operator" of his mother's property as well as his own, even though only his mother will receive the proceeds of the crops produced on her land. To make matters worse, the widow will not be able to hire a professional farm manager. By definition, under this Bill, farm managers are "operators", and so any land they manage over 960 acres will be subject to paying full cost for its water.

In many family farm operations, there is more than one family unit working together. This became particularly necessary in the 1980's, as younger farmers did not have the credit worthiness to establish totally separate farms with their own financing, equipment, et cetera. Instead, while the younger generation families might own or lease their own land, and keep their crop productions separate, they often share and exchange the day-to-day labor and supervision. Where the work or other aspects of the farming is shared, under this Bill it may be impossible to determine whether any one person performs the greatest proportion of the decision making or supervision, and therefore the lands of all the individual members of the family risk being aggregated together.

In the Sacramento Valley, in a district which receives project water from the Tehama-Colusa Canal, there is a family operation which is extremely typical of countless similar family farms which have never violated Reclamation Law, but are now placed in substantial risk by this Bill.

This operation involves two brothers, who themselves inherited the farm operation originally founded by their father. These two brothers, men in their 70's, are still active in farming and raise a variety of orchard and field crops on about 900 acres of land. Three of their adult sons, two of whom are themselves married and have children, have a separate operation amongst themselves on which they also raise field and orchard crops on another about 900 acres of land they own or lease. The fathers have no economic interest in the sons' operation, nor do the sons have such an interest in their fathers'. The fathers, however, having been in business much longer, particularly during years when farming was more profitable, have been able to acquire most of the equipment, which they now all must share in order to continue. In addition, one of the sons is particularly interested in orchards, and so supervises almost all of that part of the fathers' and sons' farms. Another of the sons has trained himself in the use of a computer, and so oversees the office functions for both farms, for such things as payroll, budgeting, and negotiating with their respective lenders for each year's operating loans. During harvest, they all

share in the work not only of supervising the harvesting crews, but also themselves operating much of the equipment. This is typical of the way they divide and share the responsibilities and supervision throughout the growing season.

The crop proceeds, however, are never intermingled between the sons and the fathers. At any given point in time, however, as S. 2659 states, any of the five of these farmers could be held to be the operator of some part or all of the other generation's farm, in which he has no economic interest. All he is doing is working together with the other four as a member of this close-knit family. The result would be that the land which he is "operating" could be subject to an unaffordable price for the water, or even entirely ineligible for it. After the 1982 Act, this family elected to come under the 960-acre provisions of the Law, and have established themselves within the rules we have all given them. What is it that they have done wrong, so that this Bill now places them in this serious financial jeopardy?

INDIRECT LANDHOLDINGS

Another aspect of this Bill requires that something called "indirect landholdings" be included in the landholdings of any individual or entity, but the term "indirect landholdings" is not defined. If it is an individual's or entity's interest in a partnership, a corporation, a trust, a tenancy-in-common or other similar forms of shared ownership, Reclamation Law already attributes these indirect interests to each owner and charges them against his or her acreage limit. Thus the suggestion that by the use of trusts, corporations or partnerships anyone has been able lawfully to exceed the 960-acre limit which already exists in the law is a misrepresentation. A distortion aimed at evoking anti-subsidy, anti-west and anti-irrigation political pressure.

TRUSTS

Despite the requirement we already have in the law that no one's interests in land, whether they hold it directly or through entities, including trusts, can exceed 960 acres, this Bill would prevent any trust from exceeding 960 acres itself, regardless of the number of beneficiaries. Additionally, trustees "who also serve as operators" would be subject to the same ownership and pricing limitations of Reclamation Law as individual landowners, even though trustees, by definition, can derive no benefit whatsoever personally from the work they perform in their trust capacity. Moreover, no trustee can properly, completely delegate his responsibilities for decision making or supervision of the assets entrusted to him and so under this Bill, any trustee could be found to be the operator. Thus no trustee can ever administer more than 960 acres, westwide.

In many situations, farm families use trusts for reasons that have no relationship to Reclamation Law. For instance, they are used to preserve assets for adult children who are unable to handle their own finances, they are used to assure that a surviving husband or wife will have a reliable source of income after the death of a spouse, and they are used for many other estate planning or tax planning reasons. Even if this Bill did not include the limits which will affect banks' and trust companies' ability to act as trustees, many people do not want to turn their affairs over to strangers. This Bill will prohibit anyone, be they a stranger or family member, however, from acting as a trustee of a trust which includes farm land receiving Reclamation water if that person also has a farm of his or her own.

Under Reclamation Law as it has been enforced since 1902, married couples could own 320 acres, that is, 160 acres each for the husband and wife, and the fact that those two parcels were farmed together did not violate the law. In this issue, as well as many others discussed herein, there was extensive discussion, debate, compromise and agreement in 1982 amendments to Reclamation Law. By amending section 203(b) of the 1982 Reclamation Reform Act to include the phrase "or operated" will result in a punitive full cost water rate being charged for half of that married couple's land. If the husband is the one making substantially all the supervisory decisions on the farm, he will be the "operator" of his wife's 160 acres.

XENOPHOBIA

You will also note that the Bill is directed at denying our foreign neighbors and friends the use of project water at any cost even if the foreign investor operates through a domestic corporation, subject to all of our laws and taxes. Under this Bill, a foreign investor cannot receive Reclamation water even if he pays full cost for it. This does not appear to be in line with our broader national policies relative to international investment in the United States.

CAN I EVER BE SURE

We need to point out that this Bill poses another, subtle but no less harmful risk for the many people it will affect. Because of the broad definition of "operator", it is almost impossible to describe the line across which a farmer cannot cross if he wishes to remain in compliance with Reclamation Law. Even if he believes in good faith that he is not the "operator" on a particular parcel, the Bureau of Reclamation may later determine that he was. Not only will this increase his water rates substantially, perhaps years after the crops were raised, but it also puts the farmer in jeopardy of Internal Revenue Code Section 90. This requires that a farmer include as income the difference between the water rate he paid and the full cost water rate because he will have been deemed to have "illegally" received water at less than full cost. This will retroactively trigger substantial additional penalties and interest for unpaid income tax liabilities, again perhaps years after the returns are filed.

If the present economic interest test is abandoned for vague "arrangements", "supervision" or "decision-making" tests involving a third party management or services, a farmer will not know what his yearly water costs will be until these factors have been annually sorted out through audit or rulings.

CAN I FINANCE THIS YEARS' CROP

Lending is a risk assessment business, consequently, anything that increases perceived or real risk will increase the cost and reduce the availability of credit for the farmer. The uncertainty will serve as a disincentive for lenders in Reclamation areas, possibly raising the cost of loans or making them unavailable.

Any uncertainty with respect to the cost of water reduces the farmer's net worth, his ability to borrow money, and his ability to make a living. Those farmers who could not survive without maximum credit at a reasonable cost, the ones who need the federal Reclamation program the most, will be the ones that would suffer the most from such uncertainty. The economic interest test, if properly enforced to limit the benefits of lower cost water on federal projects up to a maximum of 960 acres, provides the certainty that lenders require in order to make available the maximum credit to farmers. At the same time, this test prevents the abuse of persons trying to get that low cost benefit for more than 960 acres.

Another example of uncertainty for lenders is the proposed amendment to Section 224(e) of the 1982 Reclamation Reform Act. This amendment would also interfere with normal lending practices to the detriment of farmers who rely on long-term financing to acquire and refinance their property and need short-term crop financing. These again are the smaller, newer farmers particularly, who have no assets but their farm to offer as security. Section 224(e) is designed to insure that farmers can receive the maximum financing by allowing the lender to be secured by the full value of their land.

In order to assure farmers wishing to buy excess land from others their lender must be able to sell the property at it's full value in the event of a foreclosure. The proposed amendment to Section 224(e) would prohibit resales after foreclosure, inheritance or involuntary acquisition by former owners at fair market value. Lenders very often have to take ownership of foreclosed properties, hold the property and then sell it off at whatever price they can get. There are times when they even have to foreclose a second time before they can finally dispose of the property. There is no reason to burden legitimate bona fide lenders with the restriction contained in the proposes amendment to Section 224(e).

CONCLUSION

Lastly, we must comment on the emotional rhetoric of the discussion of these issues, some of which was included in the brief debate conducted by the House last month. The suggestion that a fundamental shift in the focus of Reclamation Law away from the farmer and property owner who have the direct economic interest in the crops produced, to the opaque standard of "supervision or decision making", used in this Bill, or "arrangements" and similar terms used in the House version, will affect only 2% or less of the farmers in Reclamation projects is not true. It may well be in fact that we can turn that statistic on its head and suggest that this legislation will affect 98% of all the farmers in Reclamation projects.

In 1982 Congress wrestled with the very same issues presented by S. 2659. Congress then produced a clear standard that everyone can understand. Congress again confirmed that standard in 1987. We appreciate and agree with the appraisal that Senator McClure made a few months ago that we have been presented with no evi-

dence or facts of wholesale violations of the law, a fact even admitted by the GAO in their October report.

If Congress will focus its examination and debate on where the value of Reclamation water goes, to the people who have the risk of profit or loss on the crops produced, you will conclude that what Congress did in 1982 and 1987 was the right thing.

Thank you for taking our thoughts and comments into consideration. The body of Reclamation law is exceedingly complex. And for this reason we must ask, on behalf of the many farmers who rely on the Reclamation program, that any changes be fully understood and their impacts fully intended.

Senator BRADLEY. Thank you very much.

Mr. Ward.

## STATEMENT OF GRANT R. WARD, EXECUTIVE VICE PRESIDENT, AGRI-BUSINESS COUNCIL OF ARIZONA, INC.

Mr. WARD. Mr. Chairman, I am Grant Ward. I am the Executive Vice President of the Executive Vice President of the Agri-Business Council. I appreciate the opportunity to be here in front of you today.

I have done so much scratching on this testimony, I am not sure what to define and what not to. But may I first make three general observations. First, that there are those that feel that by placing a substantially high price on water, you can serve more water. We believe that you do not have to price a resource beyond use to conserve it. And the Arizona Ground Water Management Act and its blending of reclamation water with ground water we feel proves that.

Secondly, there are those who argue that such contract and full cost restrictions proposed in this legislation will result in additional revenues for the United States. This will not be the case in Arizona and other districts where full cost is so excessive. Those excessive rates at full cost do not leave us an option. And, in fact, there will be less sales revenue.

Third, if there are abuses to the law, then I think we should talk about enforcement. If there are needs for change, then I think we ought to talk about technical corrections to the 1982 reclamation law.

But I do not think we should talk about sweeping changes that will interfere with the farmers' ability to be productive and competitive. Agricultural productivity is one of America's greatest strengths.

Many of the comments have already been given on the double subsidy issues. We would only say that, for the written record, we have submitted the comments that we gave in March on the House side on 2386 and would ask that those be reviewed.

We also feel that as to 2659 we do have some concern regarding the double subsidy legislation and that it is similar to that in the double subsidy. And this bill, which amends the Reclamation Reform Act, will significantly reduce water sales in those States that have high cost factors, full cost; put farmers in a position to have to return to ground water pumping; and endanger the traditional multi-generation family farming operation.

As a last note, we might just also note that, particularly in Arizona and I think some other States, but in Arizona where we deal a lot with the Indian reservations, the Indian farmers who are cur-

rently utilizing CAP water or who wish to utilize such water in the future for irrigation purposes would be tremendously impacted by this law. And it would, in fact, negatively impact, I believe, some of the union settlements that are now taking place.

We in Arizona stand willing to work with you to adopt a meaningful reclamation law if it is determined that such legislation is absolutely necessary. However, given the grave consequences of noncompliance discussed in this testimony and the effectiveness that we believe of the economic interest test, we think that such legislation must be drafted carefully and as narrowly as possible.

Thank you.

[The prepared statement of Mr. Ward follows:]

PREPARED STATEMENT OF GRANT R. WARD, EXECUTIVE VICE PRESIDENT, AGRI-BUSINESS COUNCIL OF ARIZONA, INC.

Mr. Chairman and Members of the Committee:

My name is Grant R. Ward and I serve as the Executive Vice President of the Agri-Business Council of Arizona, Inc. ("ABC"). ABC is an umbrella organization representing the majority of the Irrigation Districts in the state, as well as the commodity and trade associations and individual farmers, ranchers and agribusinesses. I am here today to express the serious concerns of Arizona agriculture to S. 2659 and the various versions of the so-called "double subsidy" legislation which are being considered in the Senate. There are several versions of the double subsidy legislation in circulation which have differing impacts upon those of us in Arizona.

In order to place those impacts in a proper perspective and to enable one to better understand why we feel S. 2659, and double subsidy legislation such as S. 1032 give us great concern, we would like to set out 4 reasons why the major federal reclamation project in Arizona, the CAP project, is unique from any other Bureau project in the country.

1. CAP water is to be used only as replacement or substitute water (for every acre foot of CAP water a farmer uses he must cut back a corresponding amount of pumped groundwater).

2. There are no firm contracts guaranteeing delivery of CAP water to agricultural users and their supply decreases as municipalities and other users expand their water requirements over the next 50 years.

3. CAP water is available only to those farms operated during the 10 years prior to the CAP's authorization and to those operated during the 5 years prior to the adoption of the 1980 Arizona Groundwater Management Act.

4. CAP supplies cannot be used to create any new farmland.

Because of these demands already placed on Agriculture in Arizona by the very creation of this project, we approach the proposed legislation with real apprehension and feel the impacts would be more onerous on us than on the general "full service" or "supplementary" reclamation projects.

For example, Title XVI of H.R. 2567, which recently passed in the House, has a significantly lesser impact on certain CAP irrigation districts than does S. 1032, which has been introduced by Senators Harkin and Heinz. The latter piece of legislation, which would require payment of full cost of Reclamation water utilized to irrigate surplus crops, would drastically reduce the amount of Central Arizona project ("CAP") irrigation water which could be delivered in Arizona. Since full cost rates for CAP water approximate $250.00 per acre foot, the consequence of certain versions of double subsidy legislation will require most CAP farmers to return to total reliance on pumping groundwater. This would be ironic after CAP irrigation districts have incurred repayment obligations of [$290] million to the Federal Government for construction of their CAP distribution systems and [$75] million to their bondholders for their twenty percent up front cost sharing contributions. Lost revenues by the districts from lack of CAP water sales will jeopardize those districts' ability to repay this debt to their bondholders and the United States. Return to reliance on groundwater supplies would also contravene existing Federal and State water policies of preserving existing groundwater supplies. We believe that for these well founded reasons, Title XVI of H.R. 2567 contained an exemption for districts which contributed at least twenty percent of the cost of constructing their water distribution facilities. We would urge that a similar exemption be included in

any legislation emanating from this body as well if it finds that double subsidy legislation is required.

The Agri-Business Council believes it is very important to clarify who would be affected by this legislation. First, we believe that irrigation districts that have paid out their capital obligations under repayment contracts should not be affected by this legislation. Second, we believe it necessary to clarify in any "double subsidy" legislation what is meant by "surplus" crops. ABC believes that the de la Garza amendments were a very important improvement to the double subsidy language first proposed by Congressman Gejdenson. It has long been our conviction that there is no reason to deprive a farmer of the benefit of water deliveries at his contract rate if that farmer is not enrolled in a government farm program. If the farmer is not enrolled, he or she will not receive farm program benefits. Thus, even if such a farmer were to grow a crop for which the government has acreage reduction programs in effect, that farmer will not receive a double subsidy. We have also believed that in any discussion of the "double subsidy" issue, it is necessary to define the word "surplus". The public policy debate concerning double subsidies has focused on the controversial aspect of delivering subsidized water to produce crops which are already in surplus. However, until the de la Garza amendments were offered, there was no definition of surplus, and there was no procedure for determining when surplus conditions existed. Thus, we feel very strongly that the de la Garza amendments need to be retained in any legislation which addresses the "double subsidy" issue.

Frankly, we believe that government farm programs will become less attractive to Western growers over the next few years, and that many farmers will no longer enroll in such programs. To the extent this prediction is accurate, it could be argued that double subsidy legislation is altogether unnecessary. Moreover, if bill sponsors believe double subsidy legislation will increase revenues paid to the government for water delivered by reclamation projects, it should be noted that this result is unlikely for reasons already stated. The result may well be that crop production is not reduced by double subsidy legislation; neither will the government significantly accelerate its recovery of investment in water reclamation projects. However, if Congress believes it is necessary to eliminate the possibility of double subsidy, Agri-Business Council of Arizona believes the provisions contained within H.R. 2567 are the best form of double subsidy legislation yet released for public scrutiny.

Our group strongly opposes the provisions of S. 1032. The provisions of S. 1032 are essentially the same as those set forth in H.R. 2386. A member of Agri-Business Council of Arizona, Richard Morrison, testified on H.R. 2386 earlier this year, and we express the same concerns about S. 1032 as Mr. Morrison identified in his testimony on H.R. 2386. A copy of his testimony is attached for placement in the record of this hearing.

Our concerns regarding S. 2659 are similar to those involving the double subsidy legislation in that this bill, which amends the Reclamation Reform Act of 1982 ("RRA"), will significantly reduce CAP water sales in Arizona and endanger the traditional multi-generation family farming operation.

The principal provisions of S. 2659 which cause us concern include the following:

1. Definition of "operator". One of the obvious purposes of S. 2659 is to limit the amount of Reclamation water which may be received by farm "operations" even though historically the RRA has applied acreage limitation only to landholdings of owned and leased lands. The purpose of the original RRA acreage limitation was to ensure that acreage limitation applied to those who received the true value of the Reclamation water and the standard which was generally applied was to determine who had the ultimate risk in the profitability of the crops which received such water. It was on this basis that the acreage limitation provisions of the RRA applied to a landholding of owned and/or leased land. Under current law, if a farm operator is determined to bear the ultimate risk in the crops which receive Reclamation water, he is determined to be a lessee of that acreage and it is included in his entitlement.

S. 2659 shifts the focus by applying acreage limitation to those who have no direct interest in the water's value but who may come within the definition of "operator" as newly defined in 202(8). This definition of operator expands the acreage limitation net to "the individual or entity that performs the greatest proportion of the decision making or supervision for the agricultural enterprise on a given landholding or parcel of irrigation land at a given point in time." Under this standard, it would no longer be necessary that the "operator" have a direct interest in the Reclamation water's value (i.e. risk in the crops) but it need only be necessary that the operator perform the greatest proportion of the decision making or supervision of the agricultural enterprise "at a given point in time." Obviously, this would require

invalidation of many previously Bureau of Reclamation approved farm management situations involving family members even where the farm manager is paid on a unit price basis unrelated to the risk of the crops which receive the Reclamation water. Many landowners (families and otherwise) will have to find new methods of having their lands farmed since they are unable to pay full cost rates. Since payment of full cost for CAP water is not an option in Arizona, many existing farm operations will have to be restructured to comply with a law that was just recently introduced into the CAP (the acreage limitation provisions became effective in the CAP on January 1, 1989) and for which growers and agricultural crop financiers are just becoming acquainted.

Abandonment of previously approved farm management arrangements is not the only resulting impact from the definition of "operator" as introduced in S. 2659. The standard of identifying the operator based on decision making and supervision "at a given point in time" is extremely vague given the lack of specificity for identifying a "given point in time." It is certainly conceivable that a provider of certain custom farming services such as application of pesticides, utilization of cultivation and harvesting equipment, etc., will be making the greatest proportion of decisions and providing supervision during the time period in which that particular custom service is being provided. Under the proposed language of S. 2659, this would seem to make such a custom service provider an "operator" and, therefore, lead to combining the landholdings of its own or its multiple customers for acreage limitation or determination purposes. This problem could easily be solved by identifying a reasonable "point in time," such as a crop year for a particular crop, for application of this standard. However, unfortunately, the standard itself is flawed.

In the typical family farming operation, each family member holds title to and/or leases a certain number of acres on which that family is ultimately responsible for the profit and loss of the crops grown on the acreage. Generally, the family members pool their resources to purchase equipment and hire other custom services to assist in farming their individual units of land. When the work and equipment is shared, it may be impossible to determine whether one person performs the greatest proportion of the decision making or supervision and, therefore, the lands of all the individual members of a family would be aggregated together, and measured against a single acreage limit. Is this the intended impact of S. 2659? Under existing law, such family farming arrangements are permissible provided each family (identified as spouses and minor children) has no risk in the crops on more than 960 acres which receive water. This standard works well and can be much more easily identified and enforced than that provided under the definition of "operated" in S. 2659.

2. Trusts. S. 2659 also amends 214 of the RRA dealing with trusts by extending the acreage and pricing limitations of the RRA to trust arrangements and to trustees who also act as operators of landholdings. Again, many previously approved trust agreements, including those restructured to comply with the 1987 amendments, will be invalidated by this legislation and this could result in adverse estate planning and tax consequences for the family farmer. Moreover, farmers with irrevocable trusts may be unable to amend their trust instruments to comply with new law. Existing law allows trusts to hold more than 960 acres of contract rate eligible lands provided no one beneficiary under the trust has an interest in more than 960 Reclamation water eligible acres in or out of the trust westwide. This exception allows for family trusts in excess of 960 acres to receive contract rate water and for a member of the family to act as trustee provided no one beneficiary has an interest in more than 960 acres. Under the language proposed in S. 2659, a family trust would be limited to 960 acres and a family member could not act as trustee of more than one such trust if he were involved as an "operator" of the land held under the trust. The only option remaining to the family would be to have a trust company or bank act as trustee and hope that such institutional trustee can completely delegate its responsibilities for decision making or supervision of the assets of the trust which, in itself, is unlikely. Traditionally, Arizona family farmers have not been comfortable with institutional trustees and have preferred utilizing family members or even neighboring farmers in such capacity. The trust provisions of S. 2659 would prohibit such practices in many situations.

To require every trust to hold no more than 960 acres on which it can receive contract rate water will render trust ownership an inadequate estate planning tool for many farm families. Family farm trust, which were previously approved by the Bureau of Reclamation at considerable expense to the landowners involved and which were amended as a result of the 1987 legislation, will once again have to be restructured or terminated despite potential adverse tax consequences. On two previous occasions, Congress had the opportunity to restrict trust ownership to 960 acres (with both the passage of the RRA in 1982 and with the passage of the 1987

Amendment) and on both occasions this change was rejected for good reason, including the protection of the family farm trust.

3. Foreign Ownership. S. 2659 would require that all individuals participating in an entity which receives Reclamation water be citizens of the United States or resident aliens. Again, this changes the current law which allows entities formed under Federal or state law to be eligible to receive Reclamation water at the contract rate even where those entities benefit non-resident aliens. The prohibition of non-resident alien participation contained in S. 2659 poses serious consequences in the CAP where Mexican and Canadian ownership is significant. The provision as drafted would prohibit the delivery of Reclamation water at any price to an entity which benefits a non-resident alien no matter how slight the interest of that non-resident alien in the entity. For example, a farmer who is leasing land from a corporation in which 1% of the shares are owned by a Canadian citizen who is not a U.S. resident will make that corporation ineligible to receive Reclamation water. The farmer who is leasing the land will have to depend exclusively on groundwater or some other water supply for reasons well beyond his control. This holds true no matter how large the ownership entity is and how small the participation of the non-resident alien in that entity. The results can be devastating when it is considered that there is no grace period for compliance with this provision. A non-resident alien could involuntarily acquire an interest in property at mid-crop year my means of foreclosure, marriage or inheritance, resulting in the termination of the delivery of Reclamation water for the remainder of the crop year. If there is an insufficient alternative water supply, considerable crop damage could ensue. We would suggest that there be an allowable percentage of foreign ownership in an entity receiving contract rate water, and, at the very least, a 12 month grace period for allowance to comply with the percentage requirement.

4. Penalties. S. 2659 contains language authorizing the Secretary of Interior to "establish appropriate and effective penalties for failure to comply with any provision of this Act or any regulation established pursuant to this Act." While the broadness and latitude of this provision could conceivably be troubling, we in Arizona support language which would give the Secretary authority to implement penalties other than termination of water service and institution of the "underpayment penalty" provided for under 224(i) of the RRA. Given the extremely excessive full cost rates in the CAP, the underpayment penalty is tantamount to the death penalty for anyone on which it is levied in the CAP. Additionally, with the application of acreage limitation to operators being instituted in a vague and difficult method to determine, the risk for a farmer who believes in good faith that he is not an operator, but who is later found to be one, is severe. It may be determined that his land was totally ineligible for water, or eligible only at the full cost rate, and he will be charged the difference between the contract rate and full cost rate (approximately $200 per acre foot in the CAP) plus interest on any of the water delivered at the incorrect rate. Moreover, Internal Revenue Code 90 requires that a farmer include as income the difference between the water rate he paid and the full cost water rate if he "illegally" received water at less than full cost. Obviously, the consequences of these types of penalties are mind boggling and they should be mitigated. Additionally, the law must be as clear and specific as possible and provide substantial guidelines to those receiving Reclamation water given the seriousness of the penalty provisions.

There has been considerable debate as to whether Congress ever intended to include "operated" land (for which the operator received no benefit from the Reclamation water delivered) in the acreage limitation requirements. The inclusion of operated land for acreage entitlement purposes under S. 2659 will have significant adverse economic impact on family farmers in Arizona. What is often misunderstood by those who feel that such farming situations were to be included within the acreage limitation is the cooperative and dependent relationships between family and neighboring farmers, in the West. It is very common for neighboring farmers, whether related or not, to share certain equipment, labor and other services, as well as share in the cost of certain custom services. S. 2659 would drastically alter these traditional farming arrangements which in Arizona's CAP, at least, preceded Reclamation water deliveries by a good many years.

Indian farmers who are currently utilizing CAP water, or who wish to utilize such water in the future for irrigation purposes, would also be impacted by this law. These Indian farmers rely heavily on custom services provided by non-Indian farmers who could not afford to have their own acreage entitlements combined with the Indian owned acreage for entitlement determination purposes. The result is likely to force Indian farmers to refuse CAP water, thereby bringing into question certain existing Indian water settlements, as well as significantly reducing the possibility of

utilizing CAP water in future Indian settlements. Full cost rates are no more an option to the Indian farmer than to the non-Indian farmer.

Proponents of legislation such as S. 2659 and the double subsidy legislation argue that restrictions on Reclamation water entitlements at the contract rate will result in additional revenues for the United States by increasing full cost water sales. This will not be the case in the Central Arizona Project, as indicated above, due to the excessive full cost water rates. Eligible landholdings under existing law, which cannot clearly pass the "operation" test contained in S. 2659, or which must participate in government crop programs as a condition for obtaining crop financing, will be required to significantly increase groundwater usage. Restructure of ownership or change in crop patterns, for tax reasons or other reasons, is unlikely in most situations and increased reliance on groundwater pumping will be common. This will result in reduced water sales from irrigation districts, particularly for those who do not control landowners' groundwater pumps, which will negatively impact those districts' ability to repay their $75 million to their bond holders and the $290 million repayment obligation to the United States for construction of their water distribution systems. The private financing required by the Federal Government as a condition of receiving CAP irrigation water was predicated on a certain level of water sales at an affordable cost and legislation such as that contained in S. 2659 will significantly impact such sales. Additionally, as mentioned earlier, the return to reliance on pre-existing groundwater supplies directly contravenes existing Federal and State water policies for preserving such supplies.

Summarizing the legislative proposals set forth in S. 2659 we note they will impact all Reclamation water farmers, Indian and non-Indian alike, by

1. Substantially prohibiting cooperation between farmers, including family members, and by restricting the use of custom services,

2. Significantly limit the availability of trusts as estate planning tools for Reclamation water family farmers and it will burden and possibly jeopardize short term and long term financing for such farmers,

3. Since payment of full cost rates is not an option for Central Arizona Project agricultural water users, the likely result of the legislation will be for farmers in the CAP to return to extensive groundwater pumping, thereby significantly reducing the current customer base for CAP water service. This result would directly contravene Federal water policy as set forth in the CAP Enabling Act and state water policy as set forth in the Federally mandated Arizona Goundwater Management Act of 1980.

4. It would also reduce the usefulness of the expensive agricultural CAP water distribution systems which has just recently been constructed. This would not serve the best interests of the United States taxpayer because lost water service revenues would undoubtedly lead to the financial disintegration of CAP irrigation districts which would lead to those districts being unable to repay the amounts owed to the United States for the construction of these distribution systems as noted earlier. It could also lead to default on payment of [$75] million to the bond holders of the districts if these districts are unable to sell sufficient CAP water to support these repayment obligations.

Mr. Chairman, we in Arizona stand willing to work with you to adopt meaningful reclamation law legislation if it is determined that such legislation is absolutely necessary. However, given the grave consequences of non-compliance as I have discussed in this testimony, such legislation must be drafted carefully and as narrowly as possible to provide substantial guidance to those who must live under reclamation laws. Traditional farming relationship between families, neighbors, Indians and non-Indians, which have predated deliveries of Reclamation water to Arizona for many years, should not be disrupted by these laws.

Thank you, Mr. Chairman, and members of the Committee for this opportunity to discuss these critically important issues with you.

Senator BRADLEY. Thank you very much, Mr. Ward.
Mr. Cecil Miller.

## STATEMENT OF CECIL MILLER, PRESIDENT, ARIZONA FARM BUREAU FEDERATION

Mr. MILLER. My name is Cecil Miller and I am a farmer and rancher from Litchfield Park, Arizona, and I am here representing the American Farm Bureau Federation today, the Nation's largest organization of farmers and ranchers.

The linking of farm program benefits to reclamation project water delivery disregards very important differences between commodity price support programs and reclamation programs. Both have very distinct, yet worthy objectives, and should not be mutually exclusive.

The primary purpose of Federal farm programs is to protect agricultural producers from artificially low prices, maintain farm income, and ensure National food security. The Federal Reclamation Program was designed to promote settlement of the Western States through the development of irrigated agriculture.

Title XVI of H.R. 2567 could have other negative effects. Shifts from program to nonprogram crops by producers could significantly affect supplies of nonprogram commodities and adversely affect prices; it could significantly affect production levels and market prices and competitiveness on world markets for rice, cotton, and barley. Production of these commodities on irrigated lands with reclamation water accounts for more than 5 percent of the total U.S. production.

With respect to S. 2659—and I might add we strongly opposed title XVI of H.R. 2567. With respect to S. 2659, we have additional concerns with disruptions which would result to family farm operations. By establishing a new definition of farm operator, this legislation would require that farmers who cooperate through partnerships or farm management arrangements to aggregate their acres for the purpose of calculating acreage limitation.

Currently farmers are entitled to receive below-cost water to irrigate up to 960 acres, depending on the applicable limitation. This Senate bill would disallow the full-cost—below-cost entitlement if the aggregate acreage for business purposes exceeds the 960-acre limitation. Going on, Farm Bureau denounces unlawful reorganization of large farms or landholdings for the purpose of circumventing acreage limitation laws.

We also oppose, obviously, S. 2659 then.

We do thank you for the opportunity to be with you today.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF CECIL MILLER, PRESIDENT, ARIZONA FARM BUREAU FEDERATION

My name is Cecil Miller. I am a farmer from Litchfield Park, Arizona. In partnership with my brother, I run a commercial cow and calf operation and produce cotton, barley and corn. I am representing the American Farm Bureau Federation, the nation's largest organization of farmers and ranchers.

Farm Bureau is organized in all 50 states and Puerto Rico. Farm Bureau members produce nearly every conceivable agricultural commodity grown in the U.S. This broad range of crops are produced by Farm Bureau members with and without federal commodity price supports, with and without water from federal reclamation projects.

Our policy is developed by farmers and ranchers, starting at the county Farm Bureau level. Last year the delegates to our annual meeting in Orlando, Florida adopted the following statement with regard to reclamation projects:

> "Supplemental water supplies are needed to stabilize agriculture in many areas we believe that farmers should be allowed to irrigate land already in production out of present and future federal projects." Our policy goes on to state, ". . . participation in any federal or state water projects should not adversely affect a grower's participation in federal farm programs."

Title XVI of H.R. 2567 would deny farm program commodity loans or deficiency payments to farmers who grow surplus crops and who receive water at less than

"full cost" from federal reclamation projects. Farm Bureau strongly opposes these provisions for the following reasons:

CONSIDERATION OF OTHER PUBLIC BENEFITS OF RECLAMATION PROJECTS SHOULD BE CONSIDERED WHEN ALLOCATING "FULL COST" AGRICULTURAL USES

To comply with the "full cost" requirement of the of H.R. 2567, some farmers would have to pay more than 10 times their current rate for irrigation water. Surely, increase would be much less onerous if appropriate values were assigned to other benefits. A study by the Denver Research Institute determined that the $9.7 billion investment in the reclamation program now returns more than $3.0 billion per year in direct economic benefits. Indirect benefits of reclamation projects estimated by the Bureau of Reclamation include:

Fifty-three million visitor days per year of recreational use of 286 areas in 17 western states.

$23 billion annually in economic activity stimulated by reclamation projects (agricultural jobs, recreation power, municipal and industrial water).

$45 billion in federal tax revenues generated by reclamation projects since 1940.

Wayne N. Marchant, former Deputy Assistant Secretary for the Department of the Interior states, "Without the support for development of irrigation established by Congress, much of the agricultural development in the West . . . would not have occurred. Without the irrigation component, most of the Reclamation projects would not have been built. These projects have provided clean power to spark opportunities available in the West. It would not be unfair to say they have supported and continue to support the development of the majority of major metropolitan areas in the West."

Agricultural producers should pay "full cost" only if it is a fair cost which takes into account other direct and indirect benefits of reclamation project development.

COMMODITY PROGRAMS AND RECLAMATION PROGRAMS HAVE DISTINCT OBJECTIVES AND OPERATE INDEPENDENTLY; THE USE OF ONE PROGRAM SHOULD NOT BE CONTINGENT UPON THE USE OR NON-USE OF THE OTHER

Linking of farm program benefits to reclamation project water delivery disregards very important differences between commodity price-support programs and reclamation projects. Both have very distinct, yet worthy objectives and should not be mutually exclusive.

The primary purpose of federal farm programs is to protect agricultural producers from artificially low prices, maintain farm income and to help insure national food security. The Federal Reclamation Program was designed to promote settlement of the western states through the development of irrigated agriculture.

Another important difference is that water prices are generally fixed from one year to the next. Farm income supports may change dramatically year to year. For instance, there were no deficiency payments for many agricultural commodities in 1984, but in 1985, deficiency payments reached an all-time high. The so-called "double subsidy" for agricultural producers may or may not exist from one year to the next.

Concerns with the "double subsidy" may become entirely moot if the direction of the 1985 Food Security Act is continued. This legislation has strengthened market orientation of commodity programs, reduced surpluses and dramatically decreased our dependence on commodity price supports. During the term of this legislation, federal commodity price support payments have been reduced from about $26 billion in 1985 to only $12 billion in 1989.

TITLE XVI OF H.R. 2567 WOULD ABROGATE THE FEDERAL GOVERNMENT'S WATER DELIVERY COMMITMENTS AND, WOULD IN THE PROCESS, DISRUPT MANY FAMILY FARM OPERATIONS

Denying reclamation water or price support payments could have a devastating impact on individual farmers. Although the legislation is intended to reduce benefits to "farm conglomerates" it may hurt family-sized farmers the most. Ironically, the largest agricultural producers would be most capable of staying in business alter sacrificing program benefits or below-cost water.

For most agricultural producers who use reclamation water, farm investments have been based upon existing water costs. Western land values are determined directly upon the higher crop yields made possible through irrigation. Investments in land, irrigation systems, buildings and farm equipment are based upon fixed water costs at the existing contract rate. The availability and the cost of water from recla-

mation projects determines the income producing potential and the selling price of farmland in the reclamation states.

As mentioned earlier, "full cost" pricing of water could increase water costs to some farmers 1000 percent or more. At such rates, it would be very difficult or impossible for some producers to recover their investments.

Foregoing commodity price supports may not be a viable option for some farmers for many of the similar reasons. Without the assurance of price supports and income stability provided by federal commodity programs, land values and stability some farm operations would be adversely affected.

Although some farmers might have the option of switching to production of non-program crops, planting flexibility varies greatly from one area to the next. For instance, a farmer in Arizona or California might plant a variety of alternative crops, but a corn or wheat producer in the northern Great Plains would have few options. Title XVI of H.R. 2567 would unfairly discriminate between agricultural producers based upon geographic location.

Title XVI of H.R. 2567 could have other negative effects:

Shifts from program to non-program crops by producers could significantly effect supplies of non-program commodities and adversely affect prices.

It could significantly affect production levels and market prices, and competitiveness on world markets for rice, cotton and barley. Production of these commodities on lands irrigated with reclamation water accounts for more than 5 per cent of total U.S. production.

The effectiveness of federal farm programs could be reduced if large growers of program commodities chose not to participate in federal farm programs to avoid "full cost" penalties.

Some agricultural producers wishing to protect their commodity price supports would reduce their use of reclamation water and increase their use of groundwater for irrigation, hastening groundwater depletion in some areas.

Less participation by farmers in the federal reclamation program could reduce payments from agricultural uses and slow repayment of reclamation project capital, interest, and operation expenses.

Farmers and ranchers could be forced by Title XVI of H.R. 2567 to abandon their water deliveries. This would hasten the permanent transfer of reclamation water from agricultural to other uses such as municipal and industrial.

We believe that Title XVI of H.R. 2567 does not give adequate consideration to the full range of benefits from reclamation projects, that it ignores important differences between reclamation projects and farm program benefits, that it is inequitable and that it would be very disruptive to many family farm operations. We strongly urge you to oppose Title XVI of H.R. 2567.

With respect to S. 2659, we have additional concerns with disruptions which would result to family farm operations. By establishing a new definition of farm "operator," this legislation would require that farmers who cooperate through partnerships or farm management arrangements to aggregate their acres for the purposes of calculating acreage limitations.

Currently, farmers are entitled to receive below-cost water to irrigate up to 960 or 160 acres, depending on the applicable limitation. S. 2659 would disallow the full below-cost entitlement if the aggregate acreages of individuals who cooperate for business purposes exceeds the 160 or 960 acre limitation. It is our understanding that management arrangements which would trigger this requirement could include sharing of farm equipment, labor and custom farming situations which are commonly utilized by family farm operators.

Farm Bureau denounces unlawful reorganization of large farms or landholdings for the purpose of circumventing acreage limitation laws. However, in seeking to restrict below-cost water deliveries to illicit "mega-farms," S. 2659 would disrupt many family-farm operations which have developed management agreements to maximize farm efficiency. For these reasons, we also oppose S. 2659.

Thank you for your consideration of our concerns with this important legislation.

Senator BRADLEY. Thank you very much, Mr. Miller.

Mr. Green, you are the last witness.

## STATEMENT OF DENSLOW GREEN, ATTORNEY AT LAW, ON BEHALF OF THE MADERA IRRIGATION DISTRICT

Mr. GREEN. Thank you, Mr. Chairman and members of the committee.

Being the last man on the totem pole, I hope I am not the low man on the totem pole.

Senator BRADLEY. You might summarize all of the testimony that preceded you.

[Laughter.]

Mr. GREEN. I would be happy to, in 3 minutes, Mr. Chairman.

[Laughter.]

Mr. GREEN. And I am going to depart completely from our intended text because I think there is one aspect of this thing that needs some examination.

We have heard a lot today about the Boswell Trust. I think one of the things that gives people a great deal of problem with the existence of the Boswell Trust is the fact that the J.G. Boswell Company ended up farming the land that they deposed themselves of.

They did nothing that was illegal under the act. Maybe Congress could have foreseen that someone could do this, and if Congress had desired to prohibit this type of activity, could have done so.

Senator BRADLEY. You mean somewhere along the suggestion made by the Secretary of the Interior—that is that all the 329 employees would have to be deeded the land?

Mr. GREEN. No, not necessarily, I do not think it is the 329 or the 326 employees that have this in trust that created the problem. If it had gone into that trust and if the trustee had hired four or five different operators to operate this land, I do not think there would have been a thing said about the Boswell Trust. I do not think you would have heard a word about it.

But it is the fact that J.G. Boswell Company is the operator of the same land that they deeded out that has caused the problems, something they did that was legal under the law, but something that causes a lot of problems.

Now what we do not want is we do not want that type of problem to, number 1, destroy the small farmer who must use custom farming. He just cannot afford to get the equipment of the size and expense that is necessary to properly perform his operation. A 20-acre cotton farmer cannot even buy a cotton picker. A 40-acre grape farmer cannot buy a grape picker. They have to custom farm these operations. And we must preserve that for them.

And by the same token we must preserve, for the retired farmer or for the widow, the right to use custom farmers to do their entire farming operation. And you cannot limit, really, the size in which a custom farmer can act because if he is a good custom farmer, he is going to have farms scattered all over the CVP that he is going to be farming and doing a good job at. And do not take that away from us.

On family farms—Mr. Chairman, I was interested in the remarks that you quoted from Senator Jackson that essentially what we were trying to do in the reclamation law was to spread the benefits among as many people as possible.

And a statement that you made that you do not want to damage family farms, which reclamation law was intended to benefit. And as it has been suggested by Senator McClure, when there is a father and three sons that farm together, under prior law, prior to 1982, they could have farmed 2,400 acres that they owned and leased unlimited land.

I have clients that have exactly that situation and they are essentially farming today, the same land that they farmed prior to 1982 when they were limited to 160 acres. They had been able to acquire, instead of leasing land, land that they were leasing from Southern Pacific, who was required to sell it. And they had the opportunity to purchase it. And so they are now larger landowners, but still farming the same family size farm in which they are operating together.

And do not take that away from us. That is an important aspect of reclamation law and something that we think should be preserved.

With that I will close. And thank you for your time and attention.

[The prepared statement of Mr. Green follows:]

PREPARED STATEMENT OF DENSLOW GREEN, COUNCIL, ON BEHALF OF MADERA IRRIGATION DISTRICT

Mr. Chairman and members of the Subcommittee:

In an effort to remedy what some see as abuses under Reclamation Law, S. 2659 deals a lethal blow to western agriculture, harming the small farmer when the intended point of attack is the corporate giant. It is akin to using a riot gun on a crowd of spectators to flush out and eliminate suspected wrongdoers.

My name is Denslow Green. I am an attorney who has practiced water law for 43 years and I am appearing today on behalf of Madera Irrigation District. I also represent eight other Water and Irrigation Districts who receive Central Valley Project water [1] who share the same concerns as Madera in relation to S. 2659.

Madera Irrigation District is located near the geographic center of California and on the East side of the San Joaquin Valley. It contains 106,000 irrigated acres which produce a variety of tree fruits, oranges, nuts, grapes, vegetables, grains, cotton and other irrigated row crops which have an annual market value in excess of $170,000,000.00.

All of the crops grown are dependent upon irrigation. The irrigation water comes from two sources: pumping from a seriously overdrafted groundwater supply and delivery of Central Valley Project water from the Friant Unit of the CVP.

The quantity of CVP water varies greatly from year to year as there is no carryover storage on the San Joaquin River to regulate the annual run off. This means that each farm must have a pump as in many years there is insufficient surface water to produce a crop.

In common with the 27 other East side water districts which comprise the Friant Unit, the average farm size is small, consisting of 73 acres.

In my statement today, I will discuss but two aspects of S. 2659: Custom farming and the family farm and will leave to other speakers the remaining aspects of the bill.

CUSTOM FARMING

The ability to use custom farmers to produce crops within the districts is essential. Many crops require expensive sophisticated machinery which small farmers cannot afford to own. Custom farmers in order to justify the expense of acquiring the equipment must use these machines on many acres.

Some custom farmers specialize in a particular farm activity and can perform those tasks better and at lower cost than the landowner.

Women, on the average, outlive their husbands. Farm widows must have available to them competent people to perform the physical farm activities to grow their crops. Many of the competent custom farmers operate throughout the CVP and one custom farming organization may perform work on thousands of acres. In some cases, as for widows, the custom farmer may perform all of the farm tasks necessary to grow the crop. In other cases the same custom farming organization may only perform one specialized task for a farmer.

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[1] Chowchilla Water District, Oristimba Water District, Broadview Water District, Oak Flat Water District, Tranquillity Irrigation District, Sun Flower Water District, Fresno Slough Water District, and Ora Loma Water District.

Existing Reclamation Law makes the logical distinction between a person performing custom farming tasks and a person who is considered a lessee of the property by applying the economic interest test to the operation.

If a person has an economic interest in the crop grown so that the compensation he receives is dependent upon the market value of the crop produced, he is considered a lessee and the land on which the work is done is considered in determining his 960 acre entitlement.

If, on the other hand, the person performing the farm work does so at a fixed rate equivalent to the cost of the service performed and has no economic interest in the crop proceeds, he is considered a custom farmer and no limitation is placed on the number of acres his organization performs work on nor is any penalty placed on the farmer for whom he performs the service.

This test was made abundantly clear to Congress when the 1982 Reclamation Reform Act was adopted and when it was amended in 1987. It is workable, makes sense and allows the necessary custom farming activities to be performed without interference.

S. 2659 changes the whole concept from the economic interest test to a vague, unclear definition of "operator" as the individual or entity that performs the greatest proportion of the decision making or supervision on a given parcel "at a given point in time".

Such a change in reclamation law would destroy the workable custom farming operations now in effect. No custom farmer could perform work on more than 960 acres without subjecting the farmer to full cost water. The small farmer could no longer safely employ a custom operator to use specialized machinery. The farm widow would be limited to using a custom farmer who only operated on 960 acres or less. She would be required to employ the inept who by reason of the limitation could not afford to acquire equipment necessary to properly farm the land.

If the proposed change in custom farming is an attempt to change one particular custom farming operation which some legislators may feel does not comply with Congressional intent, then do so with legislation that attacks the alleged wrong directly. We urge you to allow the custom farming operations which are so essential to crop production to continue by maintaining the present laws and the regulations adopted thereunder. They work and they make sense.

### THE FAMILY FARM

From the very inception of Reclamation Law in 1902, the family farm has been considered as an essential element of the law. It is the basis upon which acreage limitation was established.

Prior to the 1982 act a father and his sons or daughters could farm as a family unit so long as each family member was limited to ownership of 160 acres (husbands and wives 320 acres) Thus a father and mother and three children who were married could own individually, but farm as a family unit 1280 acres of owned land and lease an unlimited number of acres to operate as a family farm.

Under the 1982 RRA and present law, family farms can operate so long as each adult family does not contribute more than 960 acres of owned or leased land. S. 2659 would eliminate family farms in excess of 960 acres by requiring payment of full cost—a far more restrictive action than existed before the 1982 RRA.

I am reminded of a Biblical story that my father often told. A father gathered his three grown sons around him and handed each a stick, saying that the stick represented them and their children, and asked them to break them, which they did with ease. He then took the three sticks, added a fourth for his own and tied them in a bundle. None could break the bundle. The bundle represents, he said, the strength of the family who work together.

In practical application the allegory works. Sons, and in these enlightened days daughters, who work on their parents farms as children and learn farming, grow up, marry and have children, but without their parents help cannot obtain financing to obtain their own farm property. When, with such help, they do acquire their own land, many desire to continue to farm as a family unit.

The strength of these family farm units was demonstrated in the mid 1980 farm depression in our valley. Hundreds of farmers lost their land through foreclosure; few, if any, were family farmers.

The mechanics by which family farms are organized are varied. Some use trusts, some corporations and others partnerships. Each adult family is charged with its share of the farming unit, but no share can exceed 960 acres of owned or leased land.

S. 2567 puts an end to the family farm. Again, in an attempt to strike down what some call "abuses" of Reclamation Law a very important aspect of farm life is terminated. The "abuses" are not family farms which have always been recognized and if coercive legislation is necessary it should be aimed at the specific "abuse", not the family farm.

THE EFFECT OF CHARGING FULL COST

Some may look at S. 2659 as a means of producing additional revenue. In the districts I represent it does not.

As previously stated, each farm in Madera and most of the districts on the East side of the San Joaquin Valley must have a pump to assure sufficient water to raise a crop. A portion of the irrigation supply is always pumped except in the very wet years.

The current rate the Bureau of Reclamation is charging for full cost water for Madera, is $37.37 per acre foot. To this charge the district adds $15.63 for delivery or a total of $53.00.

The energy cost for pumping for most of the lands in the district is $23.00 per acre foot.

Rather than pay full cost, therefore, the farmer will pump from the overdrafted groundwater supply to save $30.00 per acre foot. The result is that the United States does not receive the increased revenue and the groundwater supply recedes adding to the pumping costs of all of the farmers in the district and bringing closer the day of its elimination.

CONCLUSION

S. 2659 does not just solve problems that may exist in current Reclamation Law, it creates an entirely new philosophy which destroys proper custom farming and the family farm as well as the problems created in other fields which have been described to you.

If you believe that there are abuses in existing law which should be corrected, enact legislation which would cure them without destroying a fair and equitable system of water charges that exist today. In so doing, preserve the present economic interest test in custom farming and preserve the family farm.

Thank you, Mr. Chairman, and members of the Committee for this opportunity to present to you the effect of adopting S. 2659 on the small farmer and the family farm.

Senator BRADLEY. Thank you very much. I think you were an eloquent final witness.

Let me, if I could, just ask a few questions.

I think it was Mr. Peltier, but I might mention it to Mr. Donnelly as well, you argue that if the large farms were required to pay full cost for the water that that would not mean any revenue to the Federal Government. Is that your point?

Mr. PELTIER. I made that point, and any farms, large or small, can get trapped in the language of the bill, no matter, you know—in its present form, until it is tightened up, I suppose.

So any size farm can get trapped. And what would happen in the "larger farm" case where you have people working, presently working together, well, they would find a way to avoid paying full cost. And so it would not mean new revenue.

Senator BRADLEY. I see. So you are saying that no matter what we do they will always avoid—they will always find loopholes.

Mr. PELTIER. If they cannot afford to pay full cost, they will change the way they operate their farm. Maybe you have got two brothers farming together now, they will now farm separate and lose some economies in that process. So, yes, they will come into compliance. They will change the way they operate in order to avoid paying full cost. That is correct.

Mr. GREEN. Mr. Chairman, could I add something to that?

Senator BRADLEY. Sure, please.

Mr. GREEN. In the Madera District, for example, full-cost water currently is $53 an acre-foot. It costs $23 an acre-foot to pump. And every single farmer has to have a pump because we never get sufficient water for a total water supply. About half our supply has to come from the ground water.

Consequently, if you charge him $53, he is not going to take the surface water. He is going to pump and that draws the ground water table down for everyone, increasing everyone's cost and further depletes the tremendously overdrafted ground water basin.

Senator BRADLEY. Would there be any possibility that he might sell the land?

Mr. GREEN. Well, I do not see why he would sell the land when he has a pump sitting there that he can pump with. We attempt to keep our surface water price at a price that is competitive with pumping, so that we can get a balance between the use of the two of them.

If we set our surface price too high, the farmer just does not buy it and he turns his pump on.

Senator BRADLEY. Let me ask you, Mr. Donnelly, if I could, you sent a letter and you said in 1982 Congress explicitly agreed that Federal water could flow to more than 960 acres under a farm management agreement. Would you tell me where in the 1982 law you find that explicit agreement?

This is a letter signed by your organization's president. Are you familiar with the letter at all?

Mr. DONNELLY. Is it a press release, a coalition letter?

Senator BRADLEY. It says National Coalition of Farm, Land and Water Associations, and it is signed by Mr. Ray Rumens and Dean Kleckner. Are you familiar with that letter?

Mr. DONNELLY. Yes, sir.

Senator BRADLEY. Well, in it you say in 1982 that Congress explicitly agreed that the Federal water could flow to more than 960 acres under the farm management agreement. So I am asking you where did it say that in the law?

Mr. PELTIER. In the legislative history it was very clear in the discussion of economic interests and how the value of the subsidy would be traced.

Senator BRADLEY. But it does not say it in the law, right?

Mr. PELTIER. It is explicit in the record. Maybe the use of the word law is incorrect, but it is explicit in the record.

Senator BRADLEY. Is it in the conference report? Where is it?

Mr. PELTIER. I cannot give it to you off the top of my head, but we can find plenty of citations for you.

Senator BRADLEY. Well, do you have one now? I mean, this is a statement made by the president of the American Farm Bureau Federation, the president of the National Water Resources Association.

Mr. PELTIER. I cannot give you one off the top of my head, but it was abundantly clear to everybody. It was the way of doing business, and it was acknowledged by the conferees and the members of the committees, throughout.

Senator BRADLEY. It would help for a specific citation, because you said there was an explicit agreement.

Now, also in your letter you say that under S. 2659, family members operating separate farms would be prevented from even sharing equipment without triggering this provision. Where in the bill do you find such a statement?

Mr. DONNELLY. Mr. Chairman, I think the bill, as drafted, we have no choice but to take the most broad interpretation of that bill. And as drafted——

Senator BRADLEY. Notwithstanding, could you tell me where? I appreciate that. I mean, this is a letter that opposes the bill, and I think that it is perfectly within bounds to oppose a bill.

But I am just curious as to where your facts are.

Mr. PELTIER. The linkage, Senator, is back to—we read, as you have and counsel has, the GAO report citing that as one of the indicators. We look at the bill and its discussion of operators, and all of the fuzzy words that are in there. We see nothing in the bill which gives us any assurance that your words about the bill doesn't get people from sharing equipment, we do not find any assurance that the bill does not get those people.

We look at the genesis of the bill and the GAO and those things, and it is throughout.

Senator BRADLEY. You said——

Mr. PELTIER. So we take, as Mr. Donnelly said, the harshest reading. Because is this where a court is going to read it? And that is what we have to do.

Senator BRADLEY. So the material that is found in this letter embodies not just the facts, but your own concerns about what the bill might do. Is that right?

Mr. PELTIER. Absolutely, absolutely.

Senator BRADLEY. But it does not comport with the facts.

Mr. PELTIER. No, I do not agree with that statement, Senator, because we look at the facts, and we read the bill, and we draw our own conclusions. And we operate on those conclusions.

Senator BRADLEY. Okay, well I will be waiting for your citation.

Senator MCCLURE. We will provide you with the citation, but the real answer to your question is the GAO, 5 years from now, will tell you that that is what you intended.

[Laughter.]

Senator MCCLURE. I have no questions of these witnesses. I think your statements delineate some of the difficulties, and that is really what we are wrestling with is the myriad of different situations that we try to anticipate and provide for.

That is why I made the comment I did to Mr. Keyes a while ago. We did not accidentally use that term. That term "landholding" was used because we wanted to recognize the fact that there might be land management contracts, and operators who operate different tracts of land for different landholders.

Obviously, we were not innovative enough to be able to avoid practices which, in the minds of some did not achieve what they thought it was we intended to achieve.

I think we have narrowed the problem, however, to a very, very small fringe. And I think everybody—every witness that I have heard here today that has any understanding of the program at all says the great majority of reclamation projects are in good shape. The great majority of water users are in no violation.

Some are toying with the idea that the Bureau of Reclamation and the Department of the Interior has not really done their job completely. And I would share that. I think they need to go a little further. And we need to—frankly, I hope we will wait for them to do that, although I am impatient.

And maybe we will find as a result of that either some adjustments in the laws that we may decide to do. I think it is at least arguable that a trust for the benefit of a dependent minor child is at least borderline. And it may be that Congress decides we want to change that border. Maybe not.

I do think that one of the suggestions made here is if we now change the law in 1982, change the law in 1987, change the law in 1990 or 1991, that we are constantly asking people to make business arrangements on the basis of current law that do not last—that the business arrangements have to outlast the law. And the law changes and there are real tax and estate planning consequences to that activity. And with due respect to those of you who may be attorneys, attorneys benefit from that. Clients do not. And that is unfortunate.

And maybe there is a way for us if we change the regulations to try to make certain that whatever adjustments are required as a result of the changes, the law can be sheltered from tax consequences, or shielded is perhaps a better word to use than sheltered.

Senator BRADLEY. If I could say to the Senator from Idaho that I know the Senator from Wyoming would be a little concerned about that.

Senator MCCLURE. Well, obviously we are concerned. But I think if we, as a Federal Government keep changing the rules, and people, in reliance upon the rule at the time they take action, are disadvantaged by an immediate change of heart on the part of the Government, the Government has some responsibility to try to ameliorate the adverse impact.

Senator BRADLEY. You know, we had this discussion the other day in a hearing on a particular bill. And that argument is frequently made. When a taxpayer loses a benefit, that somehow or another the Government ought to make it up.

But I never hear the argument made when the taxpayer gets the benefit and entered into an agreement assuming that there would not be a very rapid depreciation or et cetera, et cetera, that somehow or another that windfall deserves any additional coverage or taxation or comment.

But that is the nature of the process, and I appreciate it.

Senator MCCLURE. We have had that discussion before and we will have it again. And we will apply it in a whole variety of different circumstances. And I do not mean to belabor that point here today.

I think Mr. Donnelly had some comment he wished to make.

Mr. DONNELLY. Mr. Chairman, I want to leave you with one thought. We do not want to be in an adversarial position with the Chairman or with the committee on this. If there is a problem, we want to be part of the solution—help you find part of the solution.

If there are violations, then we support the strongest punitive measures. The problem that we see is that first we have to identify

what the problem is. And then we have to take a look at how to solve that problem.

We see your bill, Mr. Chairman, as a large net that goes out there and it may catch the people, if any, that are violating and abusing the law. But it also catches an awful lot of innocent people as well. And we want to try and prevent that.

And we have had excellent discussions with your staff and with the staff of the minority, and we hope to continue that dialogue.

Senator BRADLEY. Senator Wallop.

Senator WALLOP. Well, Mr. Chairman, I would just echo that.

One of the difficulties in being a modern, American businessman, whether in farming or anything else, is to find a way to rely on your government for more than 18, 20 months at a time.

The Chairman is well aware that while we were doing the 1986 act, they still had not finished the regulations for the 1982 tax acts. And it is very hard to keep your feet under you in this process.

One of the things that worries me is just what Mr. Donnelly was talking about. Most of this will not affect anyone in Wyoming, except that they will be endlessly put upon to fill out forms and regulations justifying their existence upon earth. Even though the examination would be relatively simple to make from just an observation, they will not end with that.

They will be put into the position of justifying their posture as a member of reclamation project. I have never been anywhere where—I mean, I have never farmed with reclamation water. And I never leased anything but 40 acres from the Federal Government, and that cost both of us more than it was worth.

But as I watched it take place, I had the opportunity to do both of those. And one of the reasons I did not, was simply because I knew that there was going to be more in it than my patience could tolerate, whether it was leasing lands on Indian reservations, leasing large tracts of Bureau of Land Management and having a forest grazing permit, which I sold as soon as I got the property that I currently have, or reclamation projects.

I hope we do not add to that problem but try to resolve the problems in the process. And I think that is your intent. And I am certainly here to help you.

Senator BRADLEY. Thank you very much, Senator Wallop.

It is always difficult to assure result without all of those forms, that is for sure. And that is one of the problems.

I have only one more question for Mr. Miller, if I could.

In your testimony, you strongly opposed what you call illicit megafarms. And I was just curious how you would distinguish between illicit megafarms and family farms?

Mr. MILLER. I go back to I do not know what a family farm is anymore, either. But what we were attempting to say was that the Secretary has, we think, today has the ability if they are violating the intent of the law to hold them responsible. Now, if that is not there, then we have no objection to putting it into law.

Senator BRADLEY. If they are in violation of what?

Mr. MILLER. If they are in violation of the law as written today. And you had quite a discussion with him today on that.

Senator WALLOP. I might just, as a semantic thing, say that the Secretary has the authority. It is clear that at this moment in time he does not have the ability.

Mr. MILLER. Well, I did not say that.

Senator BRADLEY. Well, I will defend the Secretary in his absence. I am sure he is going to give this a fair hearing.

Senator WALLOP. Mr. Chairman, in all honesty, this was a hard-worked-on piece of legislation. I was in on it from the very beginning of it. And I believe that it is not just the Secretary, but I believe the Bureau has the authority to do what it has not done. And we are seeking to change it before we have required them to pursue the authority that they already possess.

I mean, it was a long, hard-fought piece of work, that Reclamation Reform Act. It did not take place, by any stretch of the imagination, overnight.

Senator BRADLEY. Would any of the witnesses like to have a parting comment?

Mr. Holzbauer.

Mr. HOLZBAUER. Sir, I look at that map and the J.G. Boswell had 23,283 acres that they farmed. That is over half the size of my whole project.

Senator BRADLEY. You mean of Lake——

Mr. HOLZBAUER. Of Lake Andes-Wagner, Marty II. And that is right at 300 farmers are in that process, you mean. I like to have that. I would like to have that process and that project authorized and move forward. Thank you.

Senator BRADLEY. Anybody else a parting comment?

Mr. DONNELLY. We just want to thank you, Mr. Chairman, for holding these hearings and for your respect for the democratic process. We did not get quite that treatment in the House of Representatives.

Senator BRADLEY. Well, if we had a few less members. If we had started with this panel we would have been a lot further along. But that is life.

[Laughter.]

Mr. DONNELLY. Mr. Chairman, I also have a statement from the East Columbia Basin Irrigation District. They could not get on the witness list and they asked——

Senator BRADLEY. Their statement can be submitted for the record.

Mr. PELTIER. I am sure, Mr. Chairman, I hope I will have the opportunity to testify in front of you again. It is unlikely that I will have the opportunity to ever testify in front of Mr. McClure again. And I just want to express my appreciation for the opportunity today, sir.

Senator BRADLEY. It is slightly premature to begin the good-bye plaudits, but it is certainly merited.

[Laughter.]

Senator BRADLEY. The committee will stand in adjournment.

[Whereupon, at 6:20 p.m. the hearing adjourned.]

# APPENDIX

## Additional Material Submitted for the Record

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### Prepared Statement of Richard N. Morrison, Gilbert, AZ

Mr. Chairman and Members of the Committee:

My name is Richard Morrison. I am a resident of the Town of Gilbert, Arizona. I am an attorney with Ryley, Carlock & Applewhite of Phoenix, Arizona, and I am a partner, along with two brothers, in a farming operation in Florence, Arizona. My father and grandfather before me farmed near Higley, Arizona, from the earliest days of the development of agricultural lands in the Salt River Valley.

I have carefully examined the provisions of H.R. 2386. This legislation causes me great concern. It will have unanticipated adverse impacts. In Arizona, this legislation will not only have disproportionate impacts on small farmers, but it will stop all progress toward the negotiated settlement of unresolved Indian water claims.

In Central Arizona, farmers cannot pay full-cost price for water because it is priced at over $200 per acre-foot in the Central Arizona Project (CAP) service area. Farmers also cannot forego farm program participation. Local banks often require program participation as a condition of crop financing. Even if small farmers had the option of foregoing program participation, the adverse economic impact of doing so would be greater on small farms than on large farms. Cotton is the statistically significant program crop in Arizona. According to the National Cotton Council, the program's $50,000 per person payment limitation was reached in 1988 at only 206 acres on the average Arizona cotton farm. Above that acreage, there was no additional deficiency-payment and the government payments became a smaller and smaller percentage of total farm income. I have attached as Exhibit "A" an illustration of the importance of the deficiency payments on the average Arizona cotton farm. The example was supplied by the Agri-Business Council of Arizona after consultation with agricultural lenders in Arizona.

Our Indian friends are particularly distressed by these developments. As one of them attempted to explain to Congressman Gejdenson during a January, 1990 meeting, "Just as the tribes are starting to reach economic self-sufficiency, something comes along which is inconsistent with that goal." Like other farmers, Indian farmers in Central Arizona need subsidized water and the farm program participation. H.R. 2386 will apply to Indian lands as well as lands off of the reservations. Most of the water now available to the Indian communities in Central Arizona is CAP water with the pricing problems discussed above. Ironically, if Indian farmers cannot participate in the loan or price support programs of U.S.D.A., they may not be able to use the agricultural water they have labored so long to secure for their communities.

It seems to me that this sort of legislation is the result of two major beliefs:

(1) Irrigation subsidies are too high; and

(2) Farm programs are too costly.

#### THE COST OF IRRIGATION SUBSIDIES

Before attempting any statement about what level of benefit is economically justifiable, I hope it is clear that, as defined, irrigation subsidy is the present value of the difference between capital expenditures allocated to irrigation projects and repayments from users. This is the definition used by the Congressional Budget Office in responding to Congressman Gejdenson's inquiries about irrigation subsidies.

What is important to understand is that, as defined, irrigation subsidies are not monies paid to producers and they are not current costs. Irrigation subsidies represent opportunity costs, and thus, it would be misleading to suggest that irrigation subsidies thus calculated consist of continuing flows of cash to irrigators. Economically speaking, reclamation project costs allocated to agricultural irrigation should

be considered sunk costs. I have had extensive conversations with economists, both in the private sector and in government service; if they were permitted to testify on this subject, this is the characterization they would give to irrigation subsidy. Also, irrigation subsidies, as defined, are methodologically inflated. The method used by the Congressional Budget Office in calculating irrigation subsidies does not credit payments made to the government from hydro-electric and municipal and industrial groups which are also customers of our reclamation projects. It is appropriate to deduct payments from hydro-electric and municipal and industrial groups in calculating the irrigation subsidy to farmers; it is not correct to suggest that the figure thus obtained is synonymous with "costs to the government."

It is also important to consider that, whatever economic method is used to calculate the cost of irrigation subsidy, the amount of that subsidy is relatively small in relation to other federal projects and relief programs. For example, in 1987-88, USDA paid out $5.7 billion in drought relief, virtually all of it to non-reclamation areas. In those two years alone, drought relief cost the government as much as its entire investment in the irrigation facilities of reclamation projects since 1902. (According to the Bureau of Reclamation, the total investment in all completed reclamation projects through 1986 were $9.8 billion, of which $5.4 billion was for irrigation facilities. The remainder was allocated to power, flood control, municipal water supplies, etc.)

Perhaps even more dramatically, if one compared the federal costs of reclamation facilities, almost all of which are reimbursable, with the costs of flood control levies, locks, harbor improvements and other projects across the United States, which costs are also considered to be sunk costs, reclamation states would not be seen as enjoying a disproportionate regional benefit.

### THE COSTS AND BENEFITS OF FARM PROGRAMS

As to the concern about the costs of farm programs, it cannot be denied that farm programs have been expensive. However, it should also be noted that the Food Security Act of 1985 implemented some new program features which have had the very desirable effect of both reducing inventories of farm prograin commodities and reducing program outlays. Moreover, it is widely anticipated that the 1990 Farm Bill will give us an opportunity to experiment with cropping flexibility—a form of decoupling which will make it possible for farmers to be more responsive to market demands without losing their commodity program base. Many farmers would welcome such program features.

In the context of debate about farm programs, there often seems to be an assumption that farm program payments are directly pocketed by producers and result in a gift to farm operations which are already profitable. I think you know that to determine farm profitability, one must offset program payments and crop-sale revenues with all farm operating expenses to determine whether there are any profits to the farmer. Deficiency payments do not guarantee that the farm is automatically profitable. Comparing recent years, some years have been profitable, some years have not, even including program payments. This does not necessarily mean that one should not be in the farming business. It reflects the fact that agricultural markets are volatile, that costs of inputs are high and going higher, and the costs of borrowed capital have in some years been very high. Irrigated agriculture is expensive agriculture. Our growing costs are higher than those in other regions. Under these conditions, a farmer's decision to stay in business will only be made when he has a reasonable belief that, over a period of many years, averaging the years of profit and the years of loss, the business will be economically justifiable to the farmer as well as to the nation. The fact that there are loss years in the experience of most farmers provides the basis for another important notation: whatever the value of the irrigation subsidy, the ability of the farmer to capture the benefit of it for himself is uncertain. That benefit is only realized by the farmer in years of profit. In years of farm losses, reclamation project benefits are realized only by hydroelectric customers, municipal and industrial water users, recreational users, and those receiving flood control protection.

We have all heard cries for reform to the farm subsidy problem. The farm subsidies are not a national problem—they are a worldwide problem. Many of us are personally hopeful that through GATT negotiations or other international accords, the problem of competing export subsidies can be reduced or eliminated so that U.S. farmers can offer commodities to international markets without the competition of export subsidies in other countries.

In the meantime, we need farm programs to maintain the stability of farm life. Farming is obviously very important to rural economies and the small towns which

exist there, even if it is not very profitable for the farmer! In connection with my work two years ago on the Secretary of Agriculture's National Advisory Council on Rural Development, I learned that we have over 700 counties in the United States which are "by definition" farming dependent, and many of those are in the west. The multiplier effect in terms of secondary and tertiary level economic benefits from farming activity are very important to those areas of our country, and indeed, such benefits can be traced throughout our national economy.

Dr. Gordon Milliken of the Milliken Research Group, Inc. in Denver, started tracing economic activity and tax revenues attributable to reclamation projects while he was with the Denver Research Group in 1971 and has monitored the cumulative effects through 1987. According to his research, cumulative federal revenues totalled $54.4 billion through 1987. It is interesting, by the way, to compare this figure to the 1988 Congressional Budget Office report on Bureau of Reclamation subsidies. By itself, tax revenue attributable to reclamation projects has repaid the cumulative Bureau of Reclamation water subsidy by any measurement of it, unless one uses private sector interest rates (the prime rate or corporate bond rates) to estimate government opportunity costs.

However, the employment and income benefits demonstrated by Dr. Milliken's research cannot be sustained without maintaining the viability of on-farm activity.

Some persons support the reform concepts in H.R. 2386 because of their perception that we are subsidizing farmers to grow surplus crops. However, farmers are in a better position to debate the surplus question in 1990 than at anytime in the last 5 years. The 1985 Food Security Act is working to reduce surpluses. Even if the Act was not working, a review of the conditions in 1986 reveals that the number of program crop acres in Bureau of Reclamation projects is only 2.3% of the national acres in program crops. If one wants to dramatically reduce the cost of government support to farmers, H.R. 2386 is not the way to do it. This data I have cited from the 1988 U.S.D.A. report, "Agricultural Resources: Crop land, Water, and Conservation Situation and Outlook Report," well illustrates that the farm program payments saved would be minimal—only 1.8%. As the report points out, "An accurate accounting of the apparent double subsidy must recognize [that] only a portion of Bureau-served, program-crop producers participate in commodity programs in a given year . . ." Let me repeat, even if all producers in Bureau-served areas participate in commodity programs, their farms represent only 2.3% of program crop acres nationally.

I have often heard H.R. 2386 described as a "pick your subsidy" bill, but as it is written, it actually does not work that way. As a producer, if I do not have an alternate source of water, I do not have the choice of refusing subsidized water. I also do not have the choice of tendering full-cost price for irrigation water so as to maintain or restore my eligibility for farm program participation. There are some important administrative dilemmas here. Even if I wanted to tender full-cost price for water delivered to my farm, it is not clear whether I would be required to pay extra water charges to my irrigation district or to the Agricultural Stabilization and Conservation Service (so that the latter might coordinate the relationship between farm program payments and full-cost price for water); it is not clear what ASCS would do with the full-cost price proceeds if ASCS received the money (there is no mechanism for ASCS to make payments to the Bureau of Reclamation or any other agency for delivery of water under repayment contracts or water delivery contracts); even if I paid full-cost price to my irrigation district, my irrigation district's contract with the United States does not obligate the District to pass through the extra payments to the federal government. Thus, if there is an assumption that full-cost price will necessarily result in accelerated repayment of irrigation costs to the federal government, current administrative practices and arrangements do not provide a mechanism for doing that. Federal reclamation law would have to be amended to provide the authority for such an election.

As I have said, in Arizona, there is not an economic option of paying full-cost price for CAP water anyway. Full-cost price in CAP service areas is currently averaging $200 per acre-foot. If farmers are required to pay $200 per acre-foot of water in order to maintain their program payments, they would not use CAP water at all. They would revert to groundwater mining which not only violates the conservation objectives we all share, but it violates the objectives of the Arizona Groundwater Management Act.

I think it is important to refer to the Arizona Groundwater Management Act for another reason, as well. One of the concerns which normally surfaces in a debate on this type of legislation is the concern that federally-subsidized water necessarily or inevitably leads to wasted water uses. However, as most persons in the "water fraternity" know, the Arizona Groundwater Management Act provides a model for en-

suring conserving uses of water as a precious natural resource; the Code operates independently of pricing policy and mandates reductions in water use. This Code was adopted, in part, to encourage construction of the Central Arizona Project and so we think of CAP as facilitating water conservation. I would recommend a closer inspection of the Code's provisions, particularly where water conservation seems to be the primary concern.

H.R. 2386 also contains some ambiguities. H.R. 2386 would apparently prohibit participation in a price support program on one farm parcel even if federal water were used exclusively by a farmer on non-program crops on another farm parcel, or in a completely different farming operation in which that farmer had only a minor interest. Additionally, it appears that the receipt of even a single acre-foot of federal water by a grower would be fatal to that grower's participation in a price support program.

In short, I see many problems with H.R. 2386. In Arizona, practically speaking, farmers could not pick their subsidy even if the law were amended to permit such an election, and if they did make the election, most of them would have to continue the use of subsidized water. If, as a result, they could no longer participate in farm programs, set-aside requirements would no longer apply and they would plant their total acreage in program crops. The result would be minimal reductions in deficiency payments and probably substantial increases in production of crops already described by Congressman Gejdenson as "surplus crops." H.R. 2386 is not the remedy.

[Attachment.]

EXHIBIT A

U.S.D.A. program payments can make the difference between profit and loss on the typical Arizona farm.

The typical farm might have 640 acres of land, with 600 acres of irrigated grandfather rights, 300 acres of upland cotton base, 1,400 pounds/acre ASCS paying yield. A farmer planting upland cotton in the government program could plant a maximum of 262.5 acres. The following figures are based on the impact on just cotton acres:

| Growing Cost: Per Acre: | |
|---|---|
| Land preparation | $60 |
| Planting and seed | 20 |
| Chopping/weeding | 25 |
| Cultivating | 30 |
| Labor | 60 |
| Fertilizer | 70 |
| Dust | 100 |
| Herbicide | 30 |
| Insurance | 20 |
| Miscellaneous | 20 |
| Water (*$57 [CAWCD Estimate of CAP Ag Rate] x 5 acre-feet/acre) | 285 |
| Per acre* | $720 |

* This figure does not include taxes or land payments/rent.

| A. Income: | |
|---|---|
| 262.5 acres x 2.8 bales/acre = 735 bales; 735 bales x 500 lbs. x $.65 | $238,875.00 |
| Deficiency Payment = 262.5 acres x 1,400 lbs. yield x $.11 estimated payment rate | 40,425.00 |
| Total Income | $279,300.00 |
| **Expenses:** | |
| Growing Cost ($720.00 x 262.5 acres) | $189,000.00 |
| CAP Assessments (per acre on 262.5 acres) | 15,750.00 |
| Defoliation—$20/acre | 5,250.00 |
| Harvest | 30,735.00 |
| Interest | 14,700.00 |
| Total Expenses | $255,435.00 |

| | |
|---|---|
| Profit (loss) | $23,865.00 |

B. Plant 600 acres upland outside federal programs:

| | |
|---|---|
| Income: | |
| 600 acres x 2.8 bales = 1,680 bales; 1,680 bales x 500 lbs. x $.65 | $546,000.00 |
| Total Income | $546,000.00 |
| Expenses: | |
| Growing cost ($720 x 600 acres) | $432,000.00 |
| CAP Assessments | 36,000.00 |
| Defoliation | 12,000.00 |
| Harvest | 75,600.00 |
| Interest | 33,600.00 |
| Total Expenses | $589,200.00 |
| Profit (loss) | ($43,200.00) |

The alternative would be to find other crops. Financing institutions point out that (1) there is no money in growing small grains with high water costs; (2) for vegetables, while they can be good income producers, the prices are very volatile—financing is scarce; and (3) perennial crops take years to begin producing income.

Net affect could be that (1) land prices could fall to a point where anyone willing to pay taxes could own the land; (2) taxes could go several years without being paid; (3) county would suffer from short tax revenue; (4) ag-related businesses and irrigation districts would fail; (5) unemployment and bankruptcies would increase. The list could continue on, but the bottom line is that the impact on the agricultural community would be very adverse.

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PREPARED STATEMENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

This bill amends the Reclamation Reform Act of 1982 ("RRA"). The amendments impair the operation of Section 219 of RRA by broadening the definition of "operation" without consideration of the impact of this amendment upon religious and charitable organizations.

Congress intended RRA Section 219 to encourage religious and charitable organizations to produce commodities or income for the poor, thus relieving public expense.

In order to assist the poor, churches and charitable entities operate farm properties and give to the poor the produce, or sales proceeds of the produce. The Church of Jesus Christ of Latter-day Saints (LDS Church) operates a program in which it coordinates the operation of small properties by many local congregations under Section 219. Some churches and charitable entities which are not part of a larger organization can qualify as an individual congregation or other unit to receive reclamation water; hierarchical churches, including the LDS Church rely upon Section 219 because their congregations have a close relationship to the parent organization. Section 219 permits affiliated or coordinated farm ownership where the tests of that section are met.

RRA Section 202(6) as amended by S. 2659 would restrict the ability of churches and other charitable organizations to care for the poor. The bill would create a new limitation, based on the definition of "operator," under which landholding would be attributed not only to owners or lessees of property but also to "operators." The new language imputes operation of property by subsidiaries (or local congregations) to the parent organization and restricts the aggregate acreage which the whole organization may operate. The bill does not accommodate the operation of welfare projects by hierarchical churches any larger than what a single congregation qualifies to own.

The LDS Church has other concerns about the operation of RRA which are not addressed by this bill. It is difficult for religious and charitable organizations to determine the amount of land necessary to provide for the poor and needy in any given year. Factors such as the level of unemployment and economic or natural disturbances play an important and unpredictable role. In order to maintain the capacity to care for the poor, it is necessary to keep some farmland in a safety reserve status so that this land can be brought into production as necessary. It should be possible to lease this land to others until the need arises to produce commodities on

the land for distribution to the poor. Any revenue obtained from such leasing is used for charitable purposes.

Religious and charitable organizations consider reserve lands as an integral and necessary part of the organizations' charitable operation and therefore consider the land "operated" by the organization as provided in Section 219 of RRA. A modification to section 219 to include the leasing of reserved lands by religious and charitable organizations within the definition of "operate" would serve this need.

We propose that land which is leased by a religious or charitable organization to another is "operated" by the religious or charitable organization as long as (1) the religious or charitable organization is exempt from taxation under Section 501 of the Internal Revenue Code of 1954, as amended, and (2) all income from the lease is used for charitable purposes. This should apply to all religious or charitable organizations and should permit individual units or local congregations to qualify notwithstanding the affiliation of the local unit or congregation with a central organization.

Another concern is that the Bureau of Reclamation has taken the position that if a local congregation fails to qualify, the failure will terminate the qualification of all other local congregations affiliated with the same organization, even though the other local congregations are in full compliance with the law and could otherwise qualify. The LDS Church desires to obtain an amendment clarifying this issue by providing that the failure of a local congregation to qualify will not impair the qualification of another local congregation which is otherwise in good standing under reclamation law.

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PREPARED STATEMENT OF JOHN FRASER, EXECUTIVE DIRECTOR, ASSOCIATION OF CALIFORNIA WATER AGENCIES

Mr. Chairman, my name is John Fraser, and I am the Executive Director of the Association of California Water Agencies (ACWA). ACWA was founded in 1910 by five Irrigation Districts and has expanded to 395 public water agencies and 18 mutual (private) water agencies that deal with all kinds of water issues which ACWA represents before the State Legislature and Federal and State administration, when necessary. ACWA is located in Sacramento, California. We would like to thank you for the opportunity to provide our views on S. 2659 and the Reclamation Reform Act in general.

As an Association representing a group of water users who have a long history of involvement in the Department of Interior's Reclamation program we welcome the interest that Congress, and independent entities like the General Accounting Office (GAO), have taken with respect to how well the program and the various requirements under the Reclamation Reform Act have worked.

I would like to state at the outset, and as a strong supporter of the legislative compromise worked out in 1982, that ACWA feels the Reclamation Reform Act is working well. Compliance by water districts in our part of the country has been high. For example, in the much publicized Westlands Water District nearly 400,000 acres of farmland has been redistributed to family farmers. There are now more than 600 farm operations in the district compared to 250 in 1982.

I would further state for the record that farmers in such parts of California as the San Luis service area are in compliance with the concept that no individual can have an equity or economic interest in a farm operation greater than 960 acres and not pay full cost for the water.

The farmers in the vast majority of Reclamation service lands in California have based their farm/water decisions on the actions that Congress undertook in passing the 1982 Reclamation Reform Act amendments, the subsequent 1987 Reclamation Act amendments and the ensuing regulations that the Department of the Interior issued.

It was in these regulations that the Bureau of Reclamation underscored the principle that the individual farmer, not the farm or landholding, would be liable for paying full cost for the water if they were in excess of 960 acres. The application of this approach has been Westwide, not just to the agricultural water users in California. To undertake an effort to "nail the two or three percent in California" that are accused of abusing this portion of law is difficult at best in a legislative arena.

The issue before you is in our view, one of enforcement, not one of changing the fundamental concepts of the law that so many in the West have come to understand and adhere to and base their farm operating decisions on.

When the Senate Energy and Natural Resources Committee last reviewed the implementation of the Reclamation Reform Act of 1982 in the Fall of 1987, Senator

McClure offered up the following comments that capture the essence of the issue before you today:

> I have no illusions that there are individuals who will try to circumvent the provisions (of the Reclamation Reform Act) anymore than there are individuals who try to avoid the Internal Revenue Code. However, I believe that the Department does have both the will and the authority to deal with such attempts.
>
> I think it would be a grave mistake to legislate until a need for such legislation can be demonstrated in practice rather than in theory. As was the case in 1982, today the vast majority of farmers are in compliance with the law. However, once again, there are allegations of abuse in a few districts in California.
>
> Unfortunately, when the law is changed as a result, legitimate farmers in Arizona, Montana, Idaho and the rest of the Reclamation states become subject to more onerous reporting and compliance requirements.
>
> . . . I also understand that the GAO has been asked to examine the implementation of the Reclamation Reform Act and it might be well to wait for the results of that audit.

Mr. Chairman, we now have the results of that audit. In an October, 1989 GAO report "Water Subsidies, Basic Changes Needed to Avoid Abuse of the 960-Acre Limit (GAO/RCED-90-6) the GAO indicated that:

> Congressional expectations have not been met. The Reclamation Reform Act, as amended, and the Bureau's implementing regulations do not preclude multiple landholdings, each of which is within the act's 960-acre limit, to continue to be operated collectively as one large farm while individually qualifying for federally subsidized water.
>
> . . . *Since these reorganized farms do not violate the act's language*, (emphasis added) Bureau audits of the individuals or legal entities who own or lease individual landholdings have found and will likely continue to find them to be in compliance with the act's 960-acre limit.

In reading through the Congressional debate that culminated in the 1982 Reclamation Reform Act, and then in amendments in 1987, it is fairly clear that Congress intended to preclude the delivery of non-full-cost water to a landholding larger than 960 acres. We feel that has been the case under the existing law and regulations and not been a problem among our water users.

We would also like to state for the record though, that Congress provided four specific exceptions to the 960-acre limitation: equivalency, excess land held under recordable contract, involuntary acquisitions and approved trusts. These are terms that have a track record for water users to understand and work with.

To get into further definition of other terms to further clear up the "intent of Congress" on this matter is perhaps a formula for greater "perceived abuse" of the act. Your attempt to define the term "operator" is a case in point. Who is to actually decide who the "individual or entity that performs the greatest proportion of the decisionmaking or supervision for the agricultural enterprise on a given landholding or parcel of irrigation land at a given point in time?"

If in fact what Senator McClure said is true, that the scofflaws may only be found in California, then let's take the time to understand the problem and explore all the ways that the problem might be corrected—through lawsuits, regulations—or if really necessary, legislation, but legislation that is so finely tuned that it does not prove to be an onerous for the rest of the West as Senator McClure has indicated.

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### Prepared Statement of Daniel Errotabere, San Joaquin, CA

Mr. Chairman and members of the subcommittee:

My name is Daniel Errotabere and together with my brothers and my mother, we farm on the western side of the San Joaquin Valley. Our family has farmed in this region since the early thirties.

Our family's operation is primarily made up of several partnerships. These partnerships are independent of each other in terms of financing, budgets, crop rotations and operations. There is no cross-collateralization or commingling of funds between partnerships. However, one of the partnerships has made a substantial investments in farming equipment, which rents at fair market rates to the two other partnerships.

Each of the various members of the Errotabere family is an active participant in the management and operation of the farm's daily affairs. The sole source of income

is derived from the farming operations. That income is directly related to the success or failure of each partnership's farming operation.

Our family farming operation currently produces cotton, small grains, tomatoes, garlic, onions, sugarbeets, cantaloupes, oat hay, alfalfa seed and encompasses approximately 2,700 acres receiving Reclamation project water (as well as acreage receiving water from other sources), which are divided among a number of entities owned in varying percentages by members of the family. No entity has a Reclamation landholding of more than 960 acres, and no member of the family has an individual Reclamation landholding of more than 300 acres.

I am primarily responsible for the business and financial aspects of each partnership's farming operation, while one of my brothers specializes in agronomics and the other is principally responsible for the equipment operations. Our mother is responsible for general administration of each partnership's operations. It would therefore be impossible for any one member of the Errotabere family to farm separately.

Under the proposed amendments to Reclamation law, all of the lands farmed by our families' three partnership would likely be combined into one "operation" eligible for a single 960 acre non-full cost entitlement. Therefore, all but 960 acres of that "operation" would be required to pay full cost for water deliveries.

My family would continue to operate the farm in order to maintain the efficient viability to survive, but it would also mean we would be forced to consider using our groundwater resource to maintain economic viability to farm.

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PREPARED STATEMENT OF JUDITH Y. BROWN, ORLAND, CA

Mr. Chairman and Members of the Subcommittee:

My name is Judy Brown and I am a farmer and landowner in the Kanawha Water District and the Orland-Artois Water District which lie in Glenn County in the Sacramento Valley of California. My family's farm, now in its fourth generation, grows field crops such as clover seeds, sugar beets, edible dry beans, corn, wheat, alfalfa for hay and seed, and cattle. Altogether my family farms about 3600 acres which includes 500 acres leased from non-family individuals. 1110 acres of our owned land is in Bureau of Reclamation water districts. The remainder of the land is irrigated by ground water. We do not receive direct crop subsidies, loan payments or other ASCS payments.

The proponents of Senator Bradley's bill (S. 2659) and of Rep. Miller's amendments to H.R. 2567 appear to have a philosophically different view of Reclamation projects than the original intent of Congress. They seem to view Reclamation projects as a welfare program for farmers. Historically Congress has viewed these projects as public works which provided the means to serve the broad social policy of providing a relatively cheap and reliable food and fiber supply for all Americans. This policy has been very successful and has well-served everyone in this Country. These Bureau of Reclamation public works projects should not be considered as welfare programs any more than Corps of Engineers flood control projects, the development of waterways for relatively cheap transportation of crops and manufactured goods, or projects such as the Tennessee Valley Authority. If Senator Bradley and Congressman Miller are successful in fundamentally changing Reclamation law into a welfare program, there will be many negative consequences which have apparently been given little attention. I will address some of these consequences a little later in this testimony.

It appears that there is a widely held perception that farmers in the western states, especially California, are all rich and raiding the U.S. treasury by not paying full cost for Reclamation water and that zillions of paper farms were formed to get around the 960 acreage limitation. These perceptions are wrong! Congressman Miller himself says there are only two percent who fall in this category. I haven't done any scientific studies to tell you the exact percentage in the rich category, but I can tell you that in my area, there are no "Lear-jet" farmers. Most of the larger farmers in this area live in comfortable homes, but hardly lead life-styles of the "rich and famous." Many of the small farmers find they or their spouses must also work at off-farm jobs to provide their families with a decent standard of living. In my own case, 1989 was the first year in which my husband and I and our two minor children reached the 28% bracket on our income tax return.

I also do not believe that the practice of creating paper farms to circumvent Reclamation Law is widespread. The development of our family's farming operation is quite typical in our area and I suspect in all other farming areas as well. I believe it will be of use to you to understand the evolution of the modern family farm from its

roots of ma and pa walking behind a plow pulled by a mule. Therefore, I present a case study of our family farm.

My grandfather, Murry Finch, came to the Orland area with his mules to farm in the early 1900's. He was seeking a better life and farming opportunity than was available to him in Missouri and North Dakota where he had grown up and homesteaded. This area had good land and water available from the Orland Unit Water Users District. Two of his sons, my father, Irvine, and uncle, Randal, joined him in farming in the 1940's. They worked hard, had a bit of luck and prospered. Over time they accumulated additional acreage. They bought tractors, harvestors and other equipment, and sought the advice of Cooperative Extension Agents to make their farm more productive. They believed that this area could really produce if there were more water available for irrigation. So my uncle worked long and hard for more than 20 years to get the Tehama-Colusa Canal built—a dream that is rapidly becoming a nightmare, I might add.

In 1970, my dad and uncle formed a cattle and equipment corporation which they named Finch Ranch. They kept the ownership of the land as an undivided tenancy in common for themselves and their wives. 510 acres of this land was later put into the Orland-Artois Water District (255 acres for each husband and wife). The corporation leases the land from them. The corporation also leases land from other non-related individuals. The corporation did custom farmwork for some neighbors and another farming corporation which was eventually purchased by family members. None of the other leased or owned land is in any Bureau of Reclamation water district.

In 1973, the next farming generation (myself, my brother and sister, and two cousins) decided to buy about 600 irrigable acres of undeveloped property in the Kanawha Water District. We formed a partnership which we named 5-C Ranch in recognition of the cousinly relationship of the five partners. Since our parents' cattle and equipment corporation was already set up with manpower and equipment, we decided to hire the corporation to do the cultural work on a machine hire basis rather than buy equipment ourselves. This arrangement has worked quite well for all the entities involved, giving all of us the benefit of efficient and flexible equipment operation. In addition, we also hire non-related farmers and custom farm operators to perform some specialized operations on our farm. We have made our own management decisions regarding which crops to plant, what cultural practices to use, how and when to market the crops, how and where to obtain financing when necessary. The corporation does not share in the crops or crop proceeds or any profit or loss that we at 5-C Ranch might have.

As time passed, my generation and our children's generation were given an interest in the cattle and equipment corporation. In 1988 my father died and his share of the land and corporation went into a trust for the benefit of mother and will later on benefit the three of us children. In 1989 my mother gave her share of the land to me and my brother and sister. My aunt and uncle gave a separate piece of their non-district property to their two sons who formed their own partnership. This partnership leases that land to the corporation. So all together in our farming family, we have two corporations, two partnerships, two trusts and the various parcels of land is mostly owned as undivided tenants in common.

None of this organizational and operational structure had anything to do with Reclamation Law since we were at all times, until my father's death, in compliance with the "old law" 160 acre limitation. And, with the exception of the trusts, all entities were formed a long time before the Reclamation Reform Act of 1982 and 1987. In 1988, due to my father's death, we elected to come under the provisions of the "new law." Under the provisions of this law, each of our individual families could have 960 acres receive water from the reclamation districts, a potential total of 6720 acres. Since we have a combined total of only 1110 acres in the water districts, we are well below that level. When my mother and aunt and uncle die or pass the land to the next generation, the maximum that any one family member will have in a Bureau district is 277 acres.

Since the death of my father and the retirement of my uncle, my two cousins, Gene and Gary, and I are responsible for the management of all the farm entities involved. Each entity, however, still maintains its separate identity and decisions are based on what is good for each unit. We are officers and employees of the corporation. Our compensation from the corporation for the last five years has averaged $52,000 total for the three of us—hardly excessive pay! We each have our own strengths and weaknesses. If each entity were to be managed by us separately, none would be efficient or profitable. We are all working together and together we are stronger. That basically is what family farming is all about—a group of people related by blood or marriage who work together for the benefit and betterment of all.

We are in the third year of a very dry period. This year Districts were allocated 50% of their contracted water. Because of this we did not plant 120 acres and another 120 acres of third year alfalfa was not irrigated. This means that 40% the 5-C Ranch's land in Kanawaha Water District was not in production. All of the water available there went on 360 acres of clover seed which was planted in the fall before the availability of water was known. There is no ground water for that land. There was a limited amount of additional water available for $40./acre foot. No row or field crop farmers bought this water since it was unprofitable to do so. The full cost water price in this area ranges from $40 to $60/acre foot. The implications of Miller's Amendments to H.R. 2567 and Bradley's Bill (S. 2659) should be clear, row crop farming in this area will not survive on land receiving Bureau water. The possibility of other types of higher value crops being grown here is not very likely due to soil types and climate conditions.

If the Miller Amendments to H.R. 2567 and/or Bradley Bill S. 2659 becomes law, we will be forced to pay full cost of the water on at least 150 acres simply because we are making the most efficient use of our farm equipment and management talent. In dollars this amounts to approximately $105/acre or $15,750./year. This is $15,750 less that will be spent in our community. In this area each agricultural dollar is multiplied about five times in its effect on our community, therefore the loss would be magnified to $78,750 from our farm alone! Since we are not unique, the loss to our rural economy would be tremendous. It makes no sense to me for Congress to adopt such schizophrenic policy which on one hand authorizes aid to rural communities and on the other hand worsens the problems by removing money from the agricultural base which supports those communities.

In addition, since the average farming profit for 5-C Ranch for the past five years has been $71/acre/year, if we pay $105 more per acre for water, you can see that our loss will be about $34/ac. Finch Ranch Corporation is less profitable and would be in a greater loss position. The effects of changing Reclamation Law into a welfare program would therefore be the usual results of welfare programs: reducing individual incentive for people to remain in farming and increasing dependence of our communities on the Government for aid.

Since many parts of the proposed legislation are vaguely written and ill-defined, farmers will have to depend upon the good-will of bureaucratic administration. I would hate to bet the family farm on such a system. One such vague area concerns custom machine hire operators and hired farm managers. One interpretation of the proposed legislation would adversely affect any custom machine hire operators which we may employ since they would have to add our acres to theirs and they would also have to pay full cost of the water on their farms or we would have to pay full-cost on more of our land. Even custom machine hire operators or farm managers who own no land would be affected, since they will be limited to doing work on 960 acres of Reclamation District land, no matter how many different owners are involved, or those owners will have to pay full cost on at least some portion of their water use.

Some members of Congress and/or their staff members have suggested splitting up our land and management team to make each ownership totally independent of the other. On the surface this seems like a reasonable solution, but I relate it to trying to divide up a house. Who would get the bathroom, the kitchen, etc.? If you want to divide a house, you sell it and divide the money. I suppose 5-C Ranch could sell its 600 acres, but who would buy it? No farmer around here wants any more land in a water district. In two more years there will be quite a bit of land on the market due to the maturing of recordable contracts on excess land created by the Reclamation Reform Act of 1982 and 1987. I would hate to sell to some foreign buyer, but I don't see any other people being interested. Even if physically dividing the farm were possible, how am I going to tell elderly and widowed mother, "Gee, Mom, I'm sorry, but you are going to have to farm and manage your property, all on your own. I can't help you. You'll have to find an outside manager."?

In the July, 1990 issue of *Reader's Digest* there was an article titled "Gorbachev and the DeMarco Family Farm." I think it states very eloquently how such misguided changes in Reclamation Law would affect our Country. The author, Frank DeMarco, writes, "Destroy individual incentives, and you kill good farming. Grandpop rented a farm, and eventually bought it, because he had confidence that he and his family would profit from their labor. His opposite numbers in the Soviet Union were annihilated for the crime of prospering. Now the Soviet Union has few good farmers." My question to the members of this Subcommittee is whether or not you wish to follow the Soviet Union's path which led to the well publicized failure of not being able to feed and clothe its citizens. Are we to be punished for the crime of

prospering and in the process making Americans the best fed and clothed nation on earth?

If there are abuses of "paper farms", formation of trusts, corporations and partnerships as schemes to avoid the intent of the law, then those farms should be taken to task under existing law. Contrary to the assertion of some members of Congress, Rep. Miller's amendments and Senator Bradley's bill would drastically affect the 98% of the farms which are complying with the intent of the law.

I understand the desire of Congress to try to balance the Federal Budget by trying to get more money from the farmers, but there is a limit to the depth of our pockets. Unlike members of Congress we are unable to vote ourselves a pay raise to pay for the increased costs—processors and consumers seem unwilling to pay any more for the food and fiber we grow.

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PREPARED STATEMENT OF JACK STONE, STRATFORD, CA

Mr. Chairman and Members of the Subcommittee:

My name is Jack Stone, I farm in the Westlands Water District located in the San Joaquin Valley of California. The same land that my father helped develop in the early 1920's.

I have worked on this land all my life until 1986 when I enacted my estate retirement plan.

The plan was to sell all my excess land to my son and grandchildren so that they could continue a farming life that I so enjoyed and they desire.

The operation consists of two trusts, one for my five grandchildren, totally independent, and I love them.

My son, Bill Stone, acts as manager for all of us and distributes the profits or losses equally.

This plan fashioned under the rules of the 1982 Reclamation Act allows us to keep our family together and have an efficient farm.

The proposed legislation put forth by Miller, Bradley, Gejdenson and Heinz could have two very detrimental effects on their operation.

First, the legislation could raise the price of water 100% thus holding our progress, security and the surrounding economy down.

Second, most importantly, if we lose the freedom to work together under one management our family farm would lose it's efficiency and ability to stay strong.

Please consider allowing them, at least, the freedom to work together.

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PREPARED STATEMENT OF MARY ALICE DIENER, FIVE POINTS, CA

Mr. Chairman and Members of the Subcommittee:

My name is Mary Alice Diener. My late husband and I began farming in the west side of the San Joaquin Valley in 1930 when most of the countryside was unfarmed and in sagebrush. We raised our six children on the farm and worked hard to make the farm a success. Today, our children and grandchildren are in farming.

My family's operations now consist of several partnerships. Each partnership is economically and operationally independent of the others. Some of the family has, however, invested heavily in farming equipment which is rented at fair market rates to the other family members, and there is sharing of employees for the sake of efficiency. Without these arrangements, it would not be economically feasible to farm.

Each member of the family partnership is totally and independently at risk for his/her share of the crops' success or failure. All members of the family participate in management decisions.

Currently, my family's farming operations produce cotton, wheat, tomatoes and other row crops. Because ground water is not sufficient, Reclamation project water is used.

If Reclamation water had not been available to farmers at an affordable rate over the years, I am most certain that the San Joaquin Valley would still be overgrown with sagebrush and tumbleweeds. If the cost of Reclamation water is increased for water used to irrigate the same land that my family has farmed for three generations, most of my family will not be able to stay in farming. That is certainly not what my late husband and I envisioned when we moved to the San Joaquin Valley 60 years ago.

EAST COLUMBIA BASIN IRRIGATION DISTRICT,
*Othello, WA, July 23, 1990.*

Hon. BILL BRADLEY,
*Hart Senate Office Bldg., Washington, DC.*

DEAR SENATOR BRADLEY: The East Columbia Basin Irrigation District has not been included on the witness list for the July 31, 1990 hearing on S. 2659 amending the Reclamation Reform Act of 1982. If that law is to be revised, we recommend that more careful consideration be given to definitions and the "double subsidy" issue. We also recommend that the law's paperwork requirements be streamlined. These topics are discussed in more detail as follows:

DEFINITIONS

If the Senate determines that the definitions of the term "landholding" and related language addressing farm size within the Reclamation Reform Act of 1982 are to be revised care must be exercised in the drafting of such language to be sure that only those landholding arrangements the Senate intends to restrict are affected. Present language in S. 2659 and H.R. 2567 may adversely impact many traditional small to medium size farm operations within the Columbia Basin Project. It is commonplace for family operations, combinations of fathers and sons, brothers, etc., and oftentimes for unrelated individuals who have separate holdings of irrigated lands, owned and/or leased, and who are in most respects operating as separate business enterprises to share equipment, to cross-finance or co-sign for each other for operating loans, to periodically trade fields for more desirable crop rotations and in other ways to cooperate in the management of their otherwise separate enterprises. Such cooperation is necessary because of the expertise and large amounts of money required to operate modern irrigated farms.

DOUBLE SUBSIDY

H.R. 2567 addresses the so-called "double subsidy" issue and it is rumored that the Senate may follow suit. Irrigating with subsidized water and receiving USDA payments are very different issues. Subsidized irrigation water is, in no way, a direct payment to the farmer. This subsidy is that portion of irrigation system development costs allocated to hydroelectric revenues or the public treasury which was necessary to construct the irrigation project which in turn served as the infrastructure base for further economic development. This public water supply simply provides the opportunity for individuals to farm. This funding mechanism provides economic benefits to most of the West's population and it would be unjust to single out USBR project farmers to pay the bill for so many. The either-or choice proposed in the "double-subsidy" issue would also most adversely affect the small to medium sized farmer. The smaller the operation the greater the impact of the loss of a USDA payment or the additional burden of full-cost water.

PAPERWORK REQUIREMENTS

If the Senate determines that the Reclamation Reform Act of 1982 should be amended, consideration should be given to easing the paperwork burden the present law and associated rules and regulations has created for the small and medium sized farmer. In an effort to regulate large landholders, most farmers are being required to certify or report on an annual basis. In 1989 in the East Columbia Basin Irrigation District there were 2,025 landholders. 1,025 of these held over 40 acres and were required to file forms. A large percentage of these farmers cannot file their forms until the last minute. Most of the major crops grown on the Columbia Basin Project are produced on a contract basis for food processors, seed companies, commodity brokers, etc. The dynamics of this competitive marketing process are such that prices and contract terms are not determined until planting time. Most banks and agricultural lenders don't finalize production loans until these prices and terms are set. Most farmers operate a combination of owned and leased lands and leases are often not finalized until these other variables are known. The normal state of affairs in late March and early April as the canals are being filled is that most farmers don't yet know exactly who is farming exactly what. This situation comes into focus simultaneously with critical early season irrigation needs and the result is the need to collect and verify RRA paperwork from hundreds of farmers in a very short time—before they're allowed to irrigate. Since most of these farmers operate much less than 960 acres they find this whole process to be an aggravating intrusion of government.

If this paperwork threshold were raised from 40 acres to 320 acres, only 308 landholders in the East Columbia Basin Irrigation District would have needed to report or certify in 1989. If the threshold were 160 acres, 554 landholders would have needed to submit forms. There is precedent in the original 1902 Reclamation Act for holdings up to 320 acres. Holdings below the acreage threshold could be tracked by the same ownership and operator records currently used to monitor the 40 acres or less holdings. It is unlikely that this higher threshold would be used to successfully exceed the 960 acre limitation. The data available from normal ownership and operator records and that gathered from those landholders required to certify or report would likely identify individuals attempting to use a combination of holdings less than the paperwork threshold as a way to exceed the acreage limitation.

Thank you for your consideration.

For The Board of Directors
RICHARD L. ERICKSON,
*Secretary-Manager.*

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KANSAS-BOSTWICK IRRIGATION DISTRICT NO. 2,
*Courtland, KS, July 31, 1190.*

Hon. BILL BRADLEY,
*Chairman, Subcommittee on Water and Power, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN BRADLEY: I am Kenneth Nelson, Superintendent of the Kansas Bostwick Irrigation District #2, located in Republic and Jewell Counties of Kansas, serving 424 small family farmers, who irrigate a total of 41,986 acres. Over 90% of our landholders irrigate less than 320 acres.

The Bostwick Unit was authorized as part of the Missouri River Basin Project by the Flood Control Act of 1944. Planning for our district began in the late 40's, construction began in the early 50's, and was completed in 1969. Our district was organized and authorized as a political subdivision of the State of Kansas in the 50's.

The Kansas Bostwick Irrigation District has been very beneficial to our area, just as Congress intended, when they authorized the project. We thank the Congress for it's wisdom and support.

I am 39 years old and have lived in the Kansas Bostwick Irrigation District all my life. I can remember when I was a young boy, many people within the community, and even within families argued over the value of the new type of farming which was coming. Many thought irrigation would be the total ruin of the community, others thought it would be beneficial. Fortunately those in favor of irrigation have proved to be right.

We now find ourselves being stereotyped as large, double dipping, environmental villians seeking to live off federal subsidies, with no regards to anything or anyone except ourselves. I can assure you nothing is further from the truth, and beg of you not to pass legislation which would destroy us, because of this false stigma.

As pointed out in my first paragraph, we are small farmers and do not consider ourselves to be receiving huge subsidies, as some would indicate. This "full cost", as computed by the Bureau of Reclamation since 1982, is surely contrary to the government's thinking when we were created. It's my understanding it comprises mostly old debt and interest in the construction of the reservoirs. Much of this is to paid by power revenues, not irrigation. I would like to assure the committee, we pay all of our share of the United States annual operations and maintenance charges. This is the physical charge for providing water to the irrigation district. We also pay our contracted repayment charges each year. All this within our ability to repay, as computed by the Bureau of Reclamation. If we were to pay full cost, charges to our No. 1 landholder would jump from $29/acre to over $110/acre. The Bureau of Reclamation computes our repayability at $30.75/acre, which clearly points out $110/acre would be impossible.

We consider this district to have had a very positive impact on our environment. The overwhelming large majority of residents of our area feel the irrigation project has enhanced our environment. Following the 1982 Reclamation Reform Act, we developed a written conservation plan which we follow and update to insure we conserve our precious water. We in the irrigation business look at the recreational and residential waste of water throughout the United States, and wonder why people question our use of flood flows in an orderly and conservative way to produce crops.

Irrigation farming in our district is a very expensive, labor intensive, type of farming which requires intense management in order to make a go of it. In years of good weather, our dryland neighbors can as well as or better than we do. Through

the recent farm crisis we had just as many bankruptcies within the district as there were without.

In our district, 74.5% of our production is corn. If we were forced to close down because of our limited cropping options, this would all return to wheat production. It would be one surplus crop for another. The Bureau of Reclamation informs us program crops grown on all their projects only represent 3% of the national total. None of the recent legislation being kicked around would reduce surpluses.

If you were to disqualify our users from farm programs it would be discriminating against them. Our farmers will spend between $100 to $150/acre on his crop as compared to $40 to $50 per acre for dryland, in our area per year. His need for subsidies for poor prices or disasters is as great or more so than the drylander. However, his chances of disaster is less than drylanders, which means less disaster aid.

We have helped small rural communities to exist and prosper. Beneficial industries and businesses have been successful in our area. High quality rural schools exist without the need for long distance bussing. We contribute to feeding the underground aquifer with good quality water which is used by several rural water districts, cities, and well irrigators in our area. We provide good constant stream flow to the Republican River, benefiting people downstream who don't even realize Kansas Bostwick Irrigation District exists. Kansas State University has an experiment farm in our district, which does valuable research which is used throughout the United States. The list of additional benefits derived from our district goes on and on.

The 1982 Reclamation Reform Act, which was not intended to enhance revenues, has changed the rules considerably from what they were when we originally contracted with the Bureau of Reclamation. Many of our patrons resented having to report on their leasing agreements. You see, things here have been done by hand shake and a man's good word since pioneer days. If a man's word wasn't good he never lasted long in the west. However, we have adjusted and were audited by the Bureau of Reclamation on July 10 and 11 of this year and found to be totally in compliance with the intent of the Reclamation Reform Act. Now, I'm told some want to determine who are the operators, as compared to landholders or owners. Congressman Miller has stated that the overwhelming majority of farmers are complying with the law. If the law is being complied with by the majority, don't change it. If you do, it will only cause noncompliance, distrust, and confusion among those who are currently in compliance with the 1982 law.

It's my understanding, in 88 years, reclamation has spent $15 billion in capital investments, which generates $23 billion in annual economic activities, and returns over $3 billion to the federal treasury, and $1.5 billion to treasuries of the 17 western states. This is surely a good federal program doing an insurmountable amount of good for our country.

Please do not amend the Reclamation Projects Act, or the Reclamation Reform Act, or attempt to change the current course of the Bureau of Reclamation. Effort to do this would be a death sentence for this district, as well as the others in the State of Kansas and many throughout the 17 western states. If we were forced to close down, the return on the federal investment from the irrigator would cease.

Thank you for this opportunity to comment.

Sincerely,

KENNETH NELSON,
*Superintendent.*

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REXBURG, ID, *July 30, 1990.*

Hon. JAMES A. MCCLURE,
*Senate Committee on Energy and Natural Resources, Washington, DC.*

Re: Reclamation Bill

DEAR SENATOR MCCLURE: Yesterday Georgia Dixon sent me some information on the proposed Miller and Gejdenson amendments to the 1982 Reclamation Reform Act. Needless to say the Bradley Bill in the Senate as a counterpart to the Miller/Gejdenson House bill would be devastating to most of Idaho's irrigated agriculture that depends on stored water for supplemental irrigation.

I don't believe that the Eastern Legislators understand the mechanics of our farming practices. For many years we have been forced to combine our farms and get larger and more efficient with machinery to be able to stay in business. Grain combines that cost $15,000 twenty years ago, now cost over $110,000. Tractors cost four to five times as much now, as does all of the other machinery needed to farm. The only way we have been able to succeed is to do more with less.

Many, many Idaho farm families have done as we have, forming partnerships or family corporations to take advantage of family labor and to expand the use of expensive machinery. To put the ridged restrictions passed by the House on the use of Reclamation water here in Idaho will undoubtedly force many family farming operations in jeopardy of bankruptcy.

Please explain to your colleagues in the Senate that we are doing our best to provide the best food in the world at the most reasonable prices to the consumer. The United States enjoys the widest variety of the choicest food in the world at the lowest price anywhere. (Less than 10% of our consumers income, compared to at least twice that in most of the other developed nations of the world). I know that the urban people feel that agriculture is subsidized heavily, but they are getting their money's worth over and over again at the super market, and in reality, it is agriculture that is offering a subsidy to the consumers.

Please use every effort to convince the Senate that we are indeed working for the consumer, and need every advantage for efficiency that we can so that costs for food can be kept at these bargain levels for the consuming public.

Thank you so much for your help in this matter.

Yours truly,

DELL RAYBOULD.

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PREPARED STATEMENT OF MORRIS GARCIA, MADERA, CA

Mr. Chairman and Members of the Subcommittee:

My name is Morris Garcia. Myself and my nephew, John Garcia has farmed on the West Side of the San Joaquin Valley since 1978.

Our operation consists of two partnerships. Each partnership operates on a totally separate basis with separate financing, budgets, crops, etc. There is no cross-collateralization or commingling of funds between partnerships. One partnership maintains an inventory of equipment and rents it at fair market rates to the other partnership.

John and myself are actively involved on a daily basis in management and operations of each partnership. Whether we have any income from their operations depends solely on their profitability.

In addition to the farming activities, I maintain a California Real Estate Brokerage License and arrange financing for California Agribusiness. This supplemental income helped our farming operation survive in the mid 1980's during those difficult economic times.

Our operation produces cotton and dry beans on approximately 1850 acres of land of which we currently own 320 acres and lease the balance. Both entities comply with the 960 acre Reclamation acreage limit.

John Garcia is responsible mainly for the daily field activities while I concentrate on the business, marketing and financial aspects of activities.

One of our entities does custom cotton picking and dry bean harvesting for other local farmers in our district as another means of supplementing our farm income.

It would appear to us that under the proposed amendments to the Reclamation law, all our partnership lands and possibly those lands on which we custon harvest for other local farmers who are totally unrelated could be combined, thus requiring ourselves as well as the other farmers to pay full cost of the water. We depend entirely on Reclamation project water. The proposed rule changes would most likely require a drastic reduction in our operation to the point that our operation would not be economically sound.

My father and John's father were tenant farmers the majority of their farming lives. We purchased our first land in the district in 1987 and hope to purchase more. We believe a partnership like we have has been one of the basic cornerstones in American Agriculture. We think the current law is working well—just look at the new ownerships in our district. Thank you for listening to us.

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PREPARED STATEMENT OF HARVEY BAILEY, REEDLEY, CA

Mr. Chairman and Members of the Subcommittee:

My name is Harvey Bailey, and I am a citrus grower from the Orange Cove area in the eastern San Joaquin Valley of California. My family has farmed in this location for three generations.

My farming operation is conducted through a partnership with my brother Lee Bailey, and our wives. We currently have a landholding of 580 acres. 500 of those acres are farmed directly by the partnership; the balance of the partnership's land-

holding comes from minority interests held by the partnership in three other partnerships with unrelated parties. My brother and I also have small landholdings as beneficiaries of our mother's estate. As a result, my brother and I each have individual landholdings of approximately 350 acres.

In order to supplement our farm income after losses during several frost years, my brother and I formed a corporation called Experienced Care, Inc. in 1974. This corporation offers farm management services to unrelated third parties at a fixed charge of $4.00 per acre per month. Experienced Care, Inc. currently provides management for approximately 25 unrelated third party owners, each of which is independent of myself and my brother. Each owner's land is farmed for that owner's separate account, and Experienced Care, Inc. has no financial relationship with these properties other than the management fee. The corporation currently provides management services to approximately 2,000 acres, with individual ownerships as small as 5 and 10 acres.

Under the proposed amendments to Reclamation law, all of the lands farmed directly by our Bailey Brother's partnership; all of the lands farmed by the three partnerships in which Bailey Brother's have minority interests; and all of the lands managed for unrelated third parties by our corporation would likely be combined into one "operation" eligible for a single 960 acre non-full cost entitlement. Therefore, all but 960 acres of this "operation" would be required to pay full cost for water deliveries.

In the Orange Cove area, the only reliable source of surface water is From the Reclamation project. Groundwater is generally not available. We have found this to be a serious situation after a three year drought in our region. Therefore, in all likelihood, the implementation of the proposed amendments would result in Bailey Brothers having to dispose of our minority interests in the three unrelated partnerships, since those partnerships could not afford to pay full cost for water simply because of Bailey Brothers minority interests. Further, the unrelated growers who have engaged our corporation to manage their properties would be economically required to terminate the management services of our corporation, since they would be unable to bear full cost pricing simply because of their selection of a farm manager. My brother and I would therefore be deprived of the opportunity to utilize our expertise in farm management, and our clients would be deprived of the ability to engage the corporation. These clients include widows and retirees who no longer can farm their own lands.

Your serious consideration of these proposed amendments and their effect on established farming practices in our area and others would be greatly appreciated. I hope to continue a farming tradition founded by my father and uncle in the 1930's with my brother and our families. We are proud of our farming operation and have done everything in our power to comply with Federal laws and regulations. The Reclamation project is vital to our survival as farmers in our area of California, and reasonable cost water is important to our economic welfare.

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### Prepared Statement of Bill Scott, Casa Grande, AZ

Mr. Chairman and Members of the Subcommittee:

My name is Bill Scott, the managing partner of a family farming operation in Pinal County, Arizona, where with my two sons, Colin and Craig, we operate Marathon Farming Company. This partnership owns land and each of us individually owns land.

The partnership does not operate more than 960 acres in which we have financial risk or profit opportunity. The partnership does however manage a farm belonging to a deceased friend's wife. We also manage a small parcel inherited by the three out of state daughters of the neighboring widow. Management fees are a fixed amount paid annually to our partnership.

The impact of the Miller-Bradley legislation would be to require my sons and I to break up an existing partnership that has been in force for fifteen years. The economic efficiencies attributable to that partnership would be gone, and a true family farm would have to be dissolved.

I do not believe that this is the intention of the proponents, nor was it ever the intent of the reclamation law as originally drafted to destroy the ability of a father to farm with other members of his family.

I had the opportunity to discuss my concerns with the staffs of Senators on this subcommittee, July 23rd thru July 25th, in Washington, D.C. At that time, I stated that this proposed legislation, if enacted, would effect 30% of the farmers in my 100,000 acre district. I have since learned that this number is closer to 70%. Most

farmers would be forced to resort back to pumping ground water, which defeats the whole purpose of the Central Arizona Project.

Our District's $100,000,000.00 debt repayment would surely be in grave jeopardy to the federal government, as well as the citizens who purchased our general obligation bonds. There is not a wide spread abuse of the law that some suspect. If changes truly need to be implemented, I urge that we work together or a segment of our economy will be irreparably damaged when the intent was an occasional correction for a very limited number of abusers.

I trust that sound judgment will prevail and appreciate the opportunity to have this statement submitted to the subcommittee.

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REGION SIX IDAHO WILDLIFE COUNCIL,
*Rexburg, ID, July 30, 1990.*

Hon. BILL BRADLEY,
*Hart Office Bldg., Washington, DC.*

Re. House Resolution 3694

DEAR SENATOR: We are writing to set clear some of the testimony that was given at the hearing on H.R. 3694. It is our understanding that Falls River Electric has once again misrepresented the sportsmen and women here in Idaho by testifying that the conservation and sports interests here in Idaho endorse their hydro project. Nothing could be further from the truth.

The Region 6 Idaho Wildlife Council is made up of sixteen of the sportsmen/conservation organizations here in Eastern Idaho. In addition to these people there are independent sportspersons from each of the nine counties in this region on the council. Not one of these representatives has ever made any endorsement of this project; in fact, they are strongly opposed to the project because of the poor track record of Bonneville Pacific Corp. with regard to protecting the environment. They have repeatedly shown disregard for the environmental restrictions placed upon them during construction of other projects.

We are therefore asking that you not grant the $1,000,000.00 that they are asking for construction. We feel that this is an unwise use of public monies when the strong possibility is that the project will do a great deal of harm to one of the premier trout fisheries in the world.

Please add this into the record regarding the hearing on H.R. 3694. Thank you for allowing us to add this input.

Sincerely,

J. KENT MARLOR,
*Council Chairman.*
PAUL BOWEN,
*Secretary.*

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NATIONAL COUNCIL OF FARMER COOPERATIVES,
*Washington, DC, August 8, 1990.*

Hon. BILL BRADLEY,
*Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: On behalf of the National Council of Farmer Cooperatives, I would like to take this opportunity to offer our views concerning S. 2659 and Title XVI of H.R. 2567 which were the subject of hearings July 31, 1990 before the Subcommittee on Water and Power. We respectfully request that these comments be included as part of the official hearing record.

The National Council of Farmer Cooperatives is a nationwide association of cooperative businesses which are owned and controlled by farmers. Its membership includes over 100 agricultural marketing, supply and credit cooperatives, plus 32 state councils. National Council members handle practically every type of agricultural commodity produced in the U.S., market these commodities domestically and around the world, and furnish production supplies and credit to their farmer members and patrons. The National Council represents about 90 percent of the nearly 5,000 local farmer cooperatives in the nation, with a combined membership of nearly two million farmers.

We are concerned that certain provisions of S. 2659, if enacted, could result in a major change in the eligibility requirements of farmers who receive Reclamation water and would have an adverse effect on legitimate farming practices.

One of the most troublesome provisions, as far as farmer cooperatives and their farmer members are concerned, relates to section 202(8) which creates a new definition of farm "operator". It is our understanding this would require farmers who operate through family partnerships, or other farm management arrangements, to aggregate their acres for the purposes of calculating acreage limitations. Management arrangements, commonly used by family farmers, which would trigger this requirement could include sharing of farm equipment, farm labor, and custom farming work that is hired jointly.

It could also apply to farmer cooperatives which provide custom services to their members—such as treating for pests, harvesting, packing, etc. The last sentence in section 202(8) states: "If an operator is an employee, subsidiary or otherwise part of a larger entity, the larger entity is also the operator." To the extent this is construed to result in a farmer cooperative being considered a farm "operator" it would require that all members of the co-op aggregate their acres for purposes of calculating acreage limitations. This would have a devastating impact on farmer cooperatives as well as jeopardize the existence of many family-farm operations which have developed joint management arrangements in order to maximize farm efficiency.

We also would like to express our concerns about Title XVI of H.R. 2567 which seeks to eliminate double subsidies, or more specifically, subsidies that promote the production of surplus crops. If enacted, these provisions would cause a shift in production in many Western areas from program (cotton, rice, wheat, corn and other feedgrains) to non-program crops. In many cases, the delicate supply and demand balance of numerous specialty crops would be directly affected and farm income would suffer.

The effectiveness of farm programs would also be jeopardized as larger growers of program commodities would probably choose not to participate in federal farm programs in order to avoid "full cost" penalties. This would, in turn, put more burden on farmers in other parts of the country, particularly smaller ones, to manage supplies of program crops. In addition, conservation compliance, which is required of those who participate in farm programs, would no longer occur for those larger producers who opt out of the program.

We urge that you give serious consideration to the concerns we have raised, as well as those raised by other farm organizations, so that legitimate family-farming practices are not severely disrupted. Again we appreciate this opportunity to offer our views and hope they are helpful as you continue your deliberations.

Sincerely,

WAYNE A. BOUTWELL,
*President.*

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